Office-Supreme Court, U.S.
FILED
SEP 10 19
JAMES R. BROWNING, Clerk

No. 391

Vol. II - Pages 333-644

TRANSCRIPT OF RECORD

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 17071

GEORGE B. PARR, D. C. CHAPA, B. F. (TOM) DONALD, JR., JESUS G. GARZA, SANTIAGO GARCIA, OCTAVIO SAENZ, JESUS OLIVEIRA, O. P. CARRILLO, OSCAR CARRILLO, SR., TEXAS STATE BANK OF ALICE, ALICE, TEXAS, and SAN DIEGO STATE BANK, SAN DIEGO, TEXAS,

Appellants,

-versus-

UNITED STATES OF AMERICA,

Appellee

Appealed from the United States District Court for the Southern District of Texas

U. S. COURT OF APPEALS
FILED
JUN 2 1958

ALPHA LAW BRIEF CO., 402 M & M BLDG., HOUSTON 2

(Original Record Received _____ 19____.)

EDWARD W. WADSWORTH
CLERK

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

U. S. A.

VS

George B. Parr, et al

CR NO. 12829

Gov't's. EXHIBITS

NOS.	Cont'd	DESCRIPTION
110	UU	BTSD Local Mutual Check #29737 To Francisco Sanchez 7/18/49 Murfee Co. Sanchez
	VV	" " " " "29823" Octavio Saenz - 8/31/51 - $35.00 - "
	WW	" " " " "30111" E.M. Saenz - 10/31/51 - $125.00 - "
110	XX	" " " " "30324" M.G. " - 11/30/51 - $125.00 - "
	YY	" " " " "30447" A.R. " - 1/31/52 - " "
	ZZ	" " " " "30732" P " - 2/29/52 - " "
	AAA	" " " " "31897" R.E. Saenz - 11/30/52 - " - Reyes Ramon Co. Sanchez
Limited to	III	BTSD Local Mutual Check #25526 - To Chano Olivares - 5/20/49 - $1.00 - Diego Hernandez
	A	Bank Ledger #15 - Octavio Saenz - $ 979.33 - May 21, 1949
	B	" " "17- " " - $ 538.44 - 1850
112	C	" " "19- " " - $335.56 - Aug. 21, 1950
	D	" " "21- " " - $82.41 - July 13, 1951
	E	" " "23- " " - $170.12 - May 26, 1952
	A	1st National Bank Deposit Slip - Octavio Saenz - 6/6/49 - $95.00
	B	" " " " " - " " - 6/15/49 - $200.00
	C	" " " " " - " " - 7/12/49 - $95.00
	D	" " " " " - " " - 8/4/49 - $95.00
	E	" " " " " - " " - 9/10/49 - "
113	F	" " " " " - " " - 10/8/49 - "
	G	" " " " " - " " - 11/8/49 - $205.00
	H	" " " " " - " " - 1/10/50 - $205.00
	I	" " " " " - " " - 2/8/50 - $31.00
	J	" " " " " - " " - 3/8/50 - $95.00
	K	" " " " " - " " - 4/8/50 - $345.00

For limitations See Page 30

Geo. B. Parr

COURTROOM CLERK

(Continued on Page 22)

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

U. S. A.

VS

George B. Parr, et al

CR NO. 12829

Co. 4's

EXHIBITS

MDS.	Cap'd.	DESCRIPTION
✓113	✓L	1st National Bank Deposit Slip - Ochoa & Sons - 5/25/50 - $35.00.
	✓M	" " " " " " - 6/5/50 - $200.00
	✓N	" " " " " " - 6/12/50 - $35.00.
	✓O	" " " " " " - 7/19/50 - "
	✓P	" " " " " " - 8/30/50 - "
	✓Q	" " " " " " - 9/15/50 - "
	✓R	" " " " " " - 9/27/50 - $60.00
	✓S	" " " " " " - 10/9/50 - $35.00
	✓T	" " " " " " - 11/16/50 - $35.00
	✓U	" " " " " " - 1/4/51 - "
✓113	✓V	" " " " " " - 2/10/51 - "
	✓W	" " " " " " - 2/21/51 - "
	✓X	" " " " " " - 3/20/51 - "
	✓Y	" " " " " " - 4/14/51 - "
	✓Z	" " " " " " - 5/19/51 - "
	✓AA	" " " " " " - 6/22/51 - "
	✓BB	" " " " " " - 8/3/51 - $185.00.
	✓CC	" " " " " " - 9/4/51 - $35.00.
	✓DD	" " " " " " - 11/14/51 - $125.00.
	✓EE	" " " " " " - 1/4/52 - $125.00.
	✓FF	" " " " " " - 2/8/52 - "
	✓GG	" " " " " " - 3/4/52 - "
	✓HH	" " " " " " - 12/10/52 - "
	✓114	Merchants Exchange Bank Signature Card - O. Seanz

YES
NOT JURY

For Limitations See Page 30

Wm. R. Peete
COURTROOM CLERK

(Continued on Page 23)

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

U. S. A.
VS
George B. Parr, et al CR NO. 12829
Def. 4's
EXHIBITS

NO.		DESCRIPTION
	A	B.I.S.D.-Tax Collector Book Ledger Sheet - June 23, 1953.
	B	" - " " " " " - July 25, 1953.
✓115	C	" - " " " " " - Oct. 26, 1953.
	D	" - " " " " " - Dec. 24, 1953.
	E	" - " " " " " - June 25, 1954.
	A	Merchants Exchange Bk Deposit Slip #37-B.I.S.D.-Tax Coll. - 2/16/53 - $784.44
	B	" " " " "14- " " " - 3/27/53 - $368.91
	C	" " " " "23- " " " - 4/6/53 - $562.23
✓116	D	" " " " "7- " " " - 5/11/53 - $91.30
	E	" " " " "17- " " " - 6/27/53 - $31.34
	F	" " " " "4- " " " - 6/30/53 - $274.04
	G	" " " " "5- " " " - 5/5/53 - $211.19
	H	" " " " "7- " " " - 9/25/53 - $315.96
✓117		Photostated Copy of Megarlia Pet. & Travis Laughlin Checks.
118		" " " Rock Hill Oil Co & State Comptroller Checks.
119	A	Signatures of "G. B. Parr", "Fernando de Peret" Manuscript
✓	B	Enlargement of Ex. 119A.
120	A	Signatures of "G. B. Parr", "O Carrillo Sr" & "J. C. King"
	B	Enlargement of Ex. 120A.
121	A	Signatures of "G. B Parr", "O Carrillo Sr" & Pooler Hume
✓	B	Enlargement of Ex. 121A.
122	A	Signatures of "G. B. Parr", "J. C King" & "Manuscript"
✓	B	Enlargement of Ex. 122A.
123	A	Signatures of "G. B Parr", "Manuscript", "O. Carrillo Sr."
✓	B	Enlargement of Ex. 123A.

See Limitations See Page 30

Wm. R. Ellis
COURTROOM CLERK

(continued on Page 24)

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

U. S. A.
VS
George B. Parr, et al
Gov't's.
CR NO. 12829
EXHIBITS

NOS.		DESCRIPTION
Admitted	124 A	Signatures of "O. Carrillo Sr", "Ramiro Carrillo" & "G. B. Parr".
	B	Enlargement of Ex. 124 A.
Admitted	125 A	Signatures of "D. C. Chapa", "Ramiro Carrillo" & "G. B. Parr"
	B	Enlargement of Ex. 125 A.
Admitted	126 A	Signatures of "Santiago Sanchez", "G. B. Parr," & "E. Carrillo Jr"
	B	Enlargement of Ex. 126 A.
Admitted	127 A	Signatures of "E. Carrillo Jr", "G. B. Parr", & "O. Carrillo Sr"
	B	Enlargement of Ex. 127 A.
Admitted	128 A	Signatures of "A. W. Tobin", "G. B. Parr", & "O. Carrillo Sr".
	B	Enlargement of Ex. 128 A.
Admitted	129 A	Signatures of "R. H. Tobin", "Amanda Canales" & "George B. Parr"
	B	Enlargement of Ex. 129 A.
Admitted	130 A	Signatures of "J. C. King", "George B. Parr," & "Manssen Jr."
	B	Enlargement of Ex. 130 A.
Admitted	131 A	Signatures of "Manssen Jr", "J. C. King", & "George B. Parr":
	B	Enlargement of Ex. 131 A.
Admitted	132 A	Signatures of "R. L. Cope", "C. M. Bradshaw" & "George B. Parr":
	B	Enlargement of Ex. 132 A.
Admitted	133 A	Signatures of "G. B. Parr", "J. C. King" & "Manssen Jr."
	B	Enlargement of Ex. 133 A.
Admitted	134 A	Signatures of "D. C. Chapa", "Reynaldo Chapa" & "Jesus ?" (illegible)
	B	Enlargement of Ex. 134 A.
Admitted	135 A	Signatures of "D. C. Chapa", "Ramiro B. Carrillo" & "R. G. ?"
		[redacted]
Admitted	136 A	Signatures of "D. C. Chapa", "Fernando G. Carrillo" & "R. G. ?"
		[redacted]

For Continuation See Page 30

COURTROOM CLERK

(Continued on Page 25)

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

U. S. A.

VS

George B. Parr, et al } Co. #'s. CR NO. 12829

EXHIBITS

NOS.		DESCRIPTION
W/D Admitted	137	A Signatures of "D.C. Chapa", "Fernando G. Carrillo" & "R.G. [illegible]"
W/D Admitted	138	A Signatures of "D.C. Chapa", "Fernando G. Carrillo" & "R.G. [illegible]"
✓	B-1	Enlargement of Ex. 138 A.
W/D Admitted	139	A Signatures of "D.C. Chapa", "Fernando G. Carrillo" & "R.G. [illegible]"
✓	B-1	Enlargement of Ex. 139 A.
W/D Admitted	140	A Signatures of "D.C. Chapa", "Fernando G. Carrillo" & "R.G. [illegible]"
✓	B-1	Enlargement of Ex. 140 A.
W/D Admitted	141	A Signatures of "O. Carrillo Sr.", "D.C. Chapa" & "J.G. Garza"
✓	B-1	Enlargement of Ex. 141 A.
W/D Admitted	142	A Signatures of "O. Carrillo Sr.", "D.C. Chapa" & "J.G. Garza"
✓	B-1	Enlargement of Ex. 142 A.
W/D Admitted	143	A Signatures of "O. Carrillo Sr." "Octavio Saenz" & "J.C. Garza"
✓	B-1	Enlargement of Ex. 143 A.
W/D Admitted	144	A Signatures of "O. Carrillo Sr.", "Hector Garcia" & "R.G. Ramos"
✓	B-1	Enlargement of Ex. 144 A.
W/D Admitted	145	A Signature of "O. Saenz on The Tex. Mex. R.R. Co. Special Power of
✓	B-1	Enlargement of Ex. 145 A.
W/D Admitted	146	A Signature of "O. Saenz" on The Tex. Mex R.R. Co. Agent's Record of Loadings, etc
✓	B-1	Enlargement of Ex. 146 A.
✓	147	Photograph of Diego Heras' Residence.
✓	148	Letter To Civil Hdl Cack Dan Shapka-12/3/52-Fr A.C.S.D.- Diego Heras.
✓	149	" " Humble O. & R. Co. c/o R.A. Newham-9/24/52-Fr A.C.S.D.-Dep. Heras

For Limitations See Page 30

Ellen K. Cocke

COURTROOM CLERK

(Continued on Page 26)

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

U. S. A.

vs

George B. Pangetal

CR NO. 12829

Gov't's EXHIBITS

NOS.		DESCRIPTION
	A	Photostat of State Comptroller's Check #466267 to B.I.S.D. - 4/[illegible] - $13,261.00
	B	" " 494460 - 2/7/50 - $15,477.00
	C	" " 726723 - 2/7/50 - $12,888.00
150	D	" " 788366 - 2/9/51 - $21,330.00
	E	" " 70900 - 11/9/51 - $14,595.00
	F	" " 140632 - 2/7/52 - $21,190.00
	G	" " 382871 - 10/4/52 - $14,469.00
	H	" " 446889 - 1/6/53 - $18,603.00
	A	Texas Co. Check # H2865 To B.I.S.D. - 9/27/51 - $12,532.64
151	B	" " Statement # 2865 - 9/27/51 - B.I.S.D. - $12,532.64
	C	B.I.S.D. Tax Receipts #2717, 2718, 2719, 2720 & 2721
	A	Texas Co. Check # H2855 To B.I.S.D. - 9/30/53 - $14,665.04
152	B	" " Statement " " 9/30/53 - B.I.S.D. - $14,665.04
	C	B.I.S.D. Tax Receipt Nos. A 472, 473, 474 & 475
	A	Texas Co. Check # H6467 To B.I.S.D. - 9/26/52 - $13,078.72
153	B	" " Statement " " - 9/26/52 - B.I.S.D. - $13,078.72
	C	B.I.S.D. Tax Receipt Nos. A111, 112, 113 & 114.
	A	Texas Pipe Line Co. Check # 46594 To B.I.S.D. - 9/30/53 - $33[illegible]
154	B	B.I.S.D. Tax Receipt # 5039 To Texas Pipe Line Co. - [illegible]
	C	Letter To B.I.S.D. Fr. Hershel Harrington - 9/[illegible]/53.
	A	Texas Pipe Line Co. Check No. 22714 To B.I.S.D. - 9/29/52 - $325.97
155	B	B.I.S.D. Tax Receipt No. 2044 To Texas Pipe Line Co. - 10/[illegible]/52 - $325.97
	C	Letter To B.I.S.D. From H. Harrington - 9/29/52.
156	A	Humble O. & R. Check No. E50710 To B.I.S.D. - 9/25/51 - $34,245.09
	B	Letter 9/24/51 To Diese Heres. B.I.S.D. Fr. Humble O. & R. Co. H. L. Stone.
		For Impeachment See Page 30

Wm. M. Boyle
COURTROOM CLERK

(Continued on Page 27)

Reject ... 62 ...

Known	Questioned
15A	17A THROUGH 17P
28A1 THROUGH 28G1	19A
28A2 THROUGH 28F2	27A
49B	27B
98A	42A
98B	49A
119B	55B1
121B	56C1
122B	57C1
123B	60B1
124B	107A
125B	108A
126B	109A1
127B	109B1
128B	109C1
129B	109D1
130B	109F1
131B	109G1
132B	151C1
133B	152C1
134A1	155B1
138A1	161A
139A1	
140A1	
141A1	
142A1	
193A1	
144A1	
145A1	
146A1	
168A	

[redacted] WITNESS
EARL WILLIAMS
6-24-57

ADMITTED PER STIPULATION

July 12, 1957.

COURT'S MEMORANDUM No. 1

All Exhibits admitted in evidence in the trial of the case of United States of America vs. George B. Parr, et al., Cr. No. 12,889, may be considered by the jury as evidence relating to all counts of the indictment and to all defendants, with the following exceptions:

The following Exhibits are limited in their consideration by the jury:

EXHIBIT NO.	LIMITATION
Govt's Exhibit No. 1	- Admitted against all defendants except San Diego State Bank.
" " No. 2	- Admitted against all defendants except San Diego State Bank.
" " No. 3	- Admitted only against B. F. (Tom) Donald, Jr. and Texas State Bank of Alice, Alice, Texas.
" " No. 4	- Admitted against all defendants except San Diego State Bank.
" " No. 5	- Admitted against all defendants except San Diego State Bank.
" " No. 9	- To be considered only as a summary of Government's Exhibits 1, 2, 4 and 5.
" " No. 10	- To be considered only as a summary of Government's Exhibits 1, 2, 4 and 5.
" " No. 27	- Admitted only against the defendants D. C. Chapa, Oscar Carrillo, Sr., Octavio Saenz, Santiago Garcia and Jesus G. Garza.
" " No. 28	- Admitted only to show (1) Handwriting and (2) who signed the checks during these months.
" " No. 222	- Admitted only against the defendant Jesus Oliveria.
" " No. 234	- Admitted only against the defendant Santiago Garcia.
" " No. 235	- Admitted only against the defendant Santiago Garcia.
" " No. 236	- Admitted only against the defendant Santiago Garcia.
" " No. 242	- Admitted only against the defendant D. C. Chapa.

All enlargements used in the testimony of the witness Earl Williams are submitted to the jury for purposes of handwriting comparison only.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

U. S. A.
VS
George B. Parr, et al

CR NO. 12829
Cr. 41.

EXHIBITS

NOS.	DESCRIPTION
✓15A	Enlarged Photograph of Signature "O. Carrillo Sr" on G. Ex. 15
A-1	" " " " " " "G. B. Parr" on G. Ex. 17A
B-1	" " " " " " " 17B
C-1	" " " " " " " 17C
D-1	" " " " " " " 17D
E-1	" " " " " " " 17E
F-1	" " " " " " " 17F
G-1	" " " " " " " 17G
17 H-1	" " " " " " " 17H
I-1	" " " " " " " 17I
J-1	" " " " " " " 17J
K-1	" " " " " " " 17K
L-1	" " " " " " " 17L
M-1	" " " " " " " 17M
N-1	" " " " " " " 17N
O-1	" " " " " " " 17O
P-1	" " " " " " " 17P
✓19A	" " " " " " " 19
✓27A	" " " " " " "O. Carrillo Sr" on G. Ex. 27
✓27B	" " " " " " "Octavio Sosa" " " 27
✓ A-1	" " " " " " "G. B. Parr" " " 28A
✓ A-2	" " " " " " "O. Sosa" " " 28A
✓ B-1	" " " " " " "O. Carrillo Sr" " " 28A
✓28 B-2	" " " " " " "G. B. Parr" " " 28B
✓ C-1	" " " " " " "O. Sosa" " " 28B
✓ D-1	" " " " " " "O. Carrillo Sr" " " 28B
✓ D-2	" " " " " " "G. B. Parr" " " 28C
	" " " " " " " 28D
	" " " " " " "O. Carrillo Sr" " " 28D

Wm. F. Kuntz
COURTROOM CLERK

(Continued on Page 31)

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

U. S. A.

VS

George B. Parr, etal } CR NO. 12829

Gov't's. EXHIBITS

NOS. Cont'd.		DESCRIPTION		
✓ 28	E-1	Enlarged Photograph of Signature "G.B. Parr" on G.G. 28F		
✓	E-2	" " "	O. Carrillo Sr.	28F
✓ 28	F-1	" " "	G.B. Parr	28F
✓	F-2	" " "	O. Carrillo Sr.	28F
✓	G-1	" " "	G.B. Parr	28G
✓	G-2	" " "	O. Carrillo Sr.	28G
✓ 42	A	" " "	D.C. Chapa	42
✓ 48	A	Enlarged Photograph of Signature		48
	A-1	(Transparent)		48
✓ 49	A	" " "		49
✓	B	" " "	O. Carrillo Sr.	49
✓ 51	A	" " "	D.C. Chapa	51
	A-1	(Transparent)		51
✓ 52	A	" " "		52
	A-1	(Transparent)		52
✓ 55	B-1	" " "		55B
✓ 56	B-1	" " "		56B
	B-2	(Transparent)		56B
✓	C-1	" " "		56C
✓ 57	C-1	" " "		57C
✓ 60	B-1	" " "		60B
✓ 98	A	" " "		98
✓	B	" " "	Oscar Carrillo	98
✓ 107	A	" " "	O. Carrillo Sr.	107
✓ 108	A	" " "	O. Carrillo Sr.	108
✓ 109	A-1	" " "	O. Carrillo Sr.	109A
✓	B-1	" " "		109B

Wm. R. Bonta

COURTROOM CLERK

(Ruled on Pages)

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

U. S. A.

VS

George B. Parrott

CR NO. 12F29

Gov't's.

EXHIBITS

NOS.	Cont'd.	DESCRIPTION	OFFERED	ADMITTED	
✓ 109	C-1	Enlarged Photograph of Signature of Carrillo on G. Ex.			109C
✓	D-1	" " " " "			109D
✓ 109	E-1	" " " " "			109F
✓	G-1	" " " " "			109G
✓ 151	C-1	" " " " "		D.C. Chapa	151C
✓ 152	C-1	" " " " "			152C
✓ 155	B-1	" " " " "			155B
✓ 161	A	" " " " "			161

COURTROOM CLERK

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

U. S. A.
VS
George B. Parr, et al
CR NO. 12829
Gov't's Exhibits of

NOS.	DESCRIPTION
12; 14&5	Admitted as To All Defs. on all Counts except Def. San Diego State Bank San Diego Texas.
13	Admitted as To Defs. B. E. (Tom) Parr Jr. and Texas State Bank of Alice Alice Texas only
9; 10; 17A thru 17P; 18; 19 thru 21	Admitted as To All Defendants, except Def. San Diego State Bank San Diego Texas.
27	Admitted as To Defs. Oscar Carrillo Sr. Estevia Saenz Santiago Garcia Jesus E Guerra & D.C. Chapa as To all Counts only
28A thru 28G	Limited To Show Handwriting & who Signed The checks During These Months.
29	Limited To Count 20 only.
60A & B	Limited To Show Check was Cashed at San Diego State Bank.
61 & 62	Limited To Show Checks were Cashed at Merchants Exchange Bank
74; 75A thru 75M; 76A thru 76P; 77A thru 77EEE; 78 & 79	Admitted as To Defs. D.C. Chapa & San Diego State Bank, San Diego Texas.
87 & 88	Admitted as To All Defendants on all Counts except as to Def. San Diego State Bank San Diego Texas
97 1	Limited For Comparison of Signatures of George B. Parr.
98	" " "

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

U S A

VS

B Parr et al

CR NO. 12829

Limitations of

Gov't's EXHIBITS

	DESCRIPTION
[redacted] thru 110 AAA	[redacted] To Defs. George B. Parr, Octavio Saenz & Oscar Carrillo Sr. only & on all Counts.
111	Limited To Defs. Texas Chicerro & Texas State Bank of Alice Alice, Texas on Count 1 & Count 2 only.
112A thru 112E, 113A thru 113 HH	Limited To Defs. George B. Parr, Octavio Saenz & Oscar Carrillo Sr. on Count 2 only.
114	Limited To Def. Octavio Saenz only & For Purpose of Handwriting.
116A thru 116H	[redacted] To Defs. D.C Chapa & Oscar Carrillo Sr. only on all Counts.
117, 118	Limited To Def. D.C. Chapa as To Count 20 only
119A, 120A, 131A, 132A, 137A, 138A, 139A, 140A, 141A, 142A, 143A, 144A, 145A, 146A	Marked For Identification only and are Not To Go To The Jury
134A, B&C	Limited To Count 14 only.
133A, B&C	Limited To Count 20 only.
169	Marked For Identification & Not To Go To The Jury.

Ilan H. Cobb

COURTROOM CLERK

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

U. S. A.

vs

George B. Parr, et al CR NO. 12,829

Plff's - EXHIBITS (2nd Trial 6-6-57)

NO.	DESCRIPTION
201	Photograph (Home of J. Olivera)
202	" (Primary School - Benavides)
203	" (Rest room Bldg.)
204	Co-Trial Stipulation (Filed 3-19-57) (Ten Under file)
205 A	Work Sheet (Act 61)
205 B	" " (" ")
206 A	" " (Act 62)
206 B	" " (" ")
207	Signature (FRANCISCO SANCHEZ)
208	Survey No. 08496 - Standard Auto Parts (V.L.69)
209	Plat - Office 8150 - Benavides
210	Alphabetical List of Tax Payers - 1952
211	Rendered Real Estate - 1952
212	Unrendered Real Estate - 1952
213	Roll "D" Rendition - 1952 (A-K)
214	" " " " (L-Z)
215	Sheet of figures
216	" " "
217	Check Stub 8-21-51 $250.00
218 A	- Summary of under oath & 8150 (2 pgs)
218 B	- adding machine tape
219	- Deposit Slips (San Diego Lbr & Hdw Co) (17 pgs)
220	- Adding machine tape (Register Tape) (3)
221	- Register tape (1)
LIMITED 222	- Summary of checks to Jesse Olivera (5 sht)
223	Cancelled check. 14

Albert E. Andreason
COURTROOM CLERK

(numbers used in trial beginning 5-6-57 start with no. 201)

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

U.S.A.

vs.

Enrique B. Parr, et al

CR NO. 12,829

Plff's EXHIBITS

NOS.	DESCRIPTION
224	Canceled Checks (Key (9))
225	List of Tax Payers (1951) (Multi)
226	Envelope Beb Real Estate List (3) Env.
227	Envelope Tom (2 Env.)
228	Envelope B.I.S.D. (1 env.)
229	Copies Budget B.I.S.D. 1952-53
230-A	Original Envelope List B.I.S.D.-1953
230-B	" " " " " "
231-A-C	Schedule of Income 1949 Enrique Parr
232-A	" " " 1950 " "
233-A	" " " 1951 " "
234-A	Ledger Sheets Misc. Exh. 26
235-A-O	Deposit slips " "
236-A-K	B.I.S.D. checks To Manuel Cobo Garza
237-A-F	" " " To R. C. GARZA
238	Photostatic copies - various checks
239	Checks 9-22-52 Atlantic B.I.S.D. $3884.79
240	Check To N. V. Lawson - B.I.S.D. $936.00
241	Check To Houston Ins. B.I.S.D. $681.49
242-A	Check No. NJ-320 Atlantic 9-22-52 $3814.79
242-B	Tax Receipt A-4 B.I.S.D. to Atlantic Ref. Co.
242-C	" " A-3 " " "
242-D	Check Copy Tax Receipt A-4 "
242-E	" " " A-5 "
243	Check 11-19-49 Enrique B. Parr $60,000.00
244-A-M	Motion & Assignment of Tax Claims
245-A-PP	Check Rio Grande Valley Gas Co.

Allen E. Anderson

COURTROOM CLERK

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

U.S.A.

vs.

George B. Parr, et al

CR NO. 12,824

EXHIBITS

REC.	EXH.	DESCRIPTION
Rec.	246	Income Tax Return Thelma & Parr - 1948
"	247	" " " " " " 1949
"	248	" " " " " " 1950
"	249	" " " " " " 1951
"	250	" " " " " " 1952
"	251	Photo 2 pages - G.B. Parr & Thelma B. Parr Income Tax 1952
	252 (A-D)	Bank Ledger Sheets - Texas State Bank
	253	Photographs Home of G.P. Carrillo
	254 (AC)	Mimeographed Counter Books - 8150

Albert F. Friedman
COURTROOM CLERK

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

U. S. A.

VS

George B. Parr, et al

CR NO. 8829

Gov. 4's

EXHIBITS

NO.	DESCRIPTION
✓ 157	Letter To Humble O.& G. Co. H.L. Stone 7/18/51 Fr. B.I.S.D. C. Cer., 110, 58.
✓ A	Humble O.& G. Check No. F 590337 to B.I.S.D. 9/24/52 - $148.66 07
✓ 158 B	Photostat of Person Receipt, 9/20/52 - D.C. Charges C.& O. 1100.00
✓ C	Letter To B.C. Chapa B.I.S.D. 9/22/52 Fr. Humble O.& G. H.L. Stone
✓ D	B.I.S.D. Tax Receipts Nos. A60, A61, A62, A23, $1.00 $4.65 9/30/52
✓ 159	Letter To Humble O.& G. H.L. Stone, 7/24/53 F. B.I.S.D. O. Carrillo 58
✓ A	Humble O.& G. Check No. F 203755 to B.I.S.D. - 9/24/52 - $23,809.35
✓ 160 B	Person Receipt - 9/25/53 - B.I.S.D. - Cd. Olivera
✓ C	Letter Fr. Humble O.& G. Co. To Stiles Hanna B.I.S.D. - 9/24/52 Fr. H.L. Stone
✓ D	B.I.S.D. Tax Receipts Nos. A 418, A419, A420, A 415, A 416 & A417 - 9/25/52
161	B.I.S.D. Tax Receipts Nos. A 406, A 407, A 408, A 409, A 410, A 411, A 412, A 413, A 414, A 405 - 9/24/52
✓ 162	Application For Registration of Cattle Brands of Parr and Kleberg Humble O.& G. 9/24/52
✓ 163	" " "

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

U. S. A.
VS
George B. Parr, et al
CR NO. 12829
Def. #'s
EXHIBITS

NOS.	DESCRIPTION
✓ 169	Bank Ledger Sheet - B.I.S.D. - D.C. Chapa, Tax Coll. - 11/13/45 - $9.15
Not Admitted 170	Typewritten Interview of Mrs. Hilda Chapa Gonzalez on 2/28/47
✓ 171	Photograph of B.I.S.D. Bldg. - Front View.
✓ 172	" " - Side View.
✓ 173	" " - Back (Rear) View
Not Admitted 174	Teacher's Contract for Miss Amelia Gonzalez on 9/27/45 - D.C. Chapa, Chas. A. Sams

Wm. R. Ireland
COUNTROOM CLERK

(Continued on Page 351)

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS

LIST OF DEFENDANTS' EXHIBITS
(DEFENDANTS EXHIBIT #241)

241

NOS	DESCRIPTION
1	Original Deposit Slip - Merchants Exchange Bank - 7-8-52
2	Page of Paper with Pencil Possible Figures on it.
A	Cashiers Check No. 32509 - 7-8-52 - $4419 - D. Carrillo Sr.
B	72401 - 7-8-52 - $4419
C	72398 - 7-8-52 - $4400
D	72395 - 7-8-52 - $4479
E	72402 - 7-8-52 - $4352
F	[illegible]
G	[illegible]
3	
4	
A	C.P. Carrillo Check #592 To [illegible]
B	C.P. Carrillo Check #593
C	594 - 7-8-52 - $4400.00 - D. Carrillo
5	Yellow Sheet of Paper with 3 Examples of Endorsements
6	Check #[illegible] - San Diego [illegible] - 11-12-52 - $122.50
7	
A	Letter Made by Marguerite A. Baker, F.B.I. on 7-21-54 From Tom Donald, Esq.
B	8-21-54
8	Savings Passbook Bank of Point of San Diego Account Number [illegible] Dec 1952
9	Nov 1952
A	San Diego Account Number [illegible] - 11-8-52 To 11-15-52 - DC Chapa
10	Bankbook Small - D.C. Chapa - Oct 30, 1951 - $72.15 (1st Dep.)
11	Cash Deposit Slip #42 - San Diego State Bk. - 11-14-52 - $1,100.00
12	Memorandum To Miss Rosa Rios From [illegible] Fenton (Four pages)
13	San Diego Account Number [illegible] - 10-15-52 to 11-15-52 - D.C. Chapa
14	Yellow Paper With Old Stamps Mexico Puente Stamp - San Diego Lowbag
15	Letter To Asst. U.S. Atty. Edgar C. Bottler From Pete Torres
16	Certified Copy of Order Authorizing Grant of Immunity of Prosecution Conviction of Diego Heras, et al

Wm. F. Roche
COURTROOM CLERK

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

U S A

VS

George B. Parr, et al Defendants

CR NO. 12829

EXHIBITS

NOS.	DESCRIPTION
17	San Diego State Bank ledger of D.C. Chapa- 10/31/57-8/10/66

Wm. T. Cobb

COURTROOM CLERK

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

U.S.A.

vs.

Diego B Rios, et al

CR NO. 12,829

Defts EXHIBITS (Oct Term 5-6-57)

NO.	DESCRIPTION
201	Signature (EXPEDITION MACHINE) (Photo)
202	Check No. 533 to F. Sanchez 10-3-1951
203	Houston Chron. (Saturday, May 18, 1957)
204	Houston Chronicle (" " " ")
205	Diagram - San Diego Fair Niles Store
206	Diagram - First State Bank & others
207 A	List of signatures (with Diego Texas)
207 B	" " " " " " "
207 C	" " " " " " "
208 (A-P)	16 photo Photostatic copies deposit slips
209 (A)	Statement Precinct Voter Service (1639)
209 (B)	" R.A. Griffin Treasurer
210	adding machine tape (with Diego Texas)
211 (A-C)	Deposit slips (S.D. & Br. THIS HOUSE SPECIAL)
212 (A-C)	Ledger Sheet (SAME HOUSE SPECIAL)
213	affidavit (SAME WORD) (4-1-53) (Typed)
214	" " (4-3-53) (Typed)
215 (A-C)	Deposit Slips (SAME as Diego Texas)
216 (A-XX)	Ledger Sheets " " " " " "
217 (A-O)	" " (LOANS) " " " " " "
218 (A-SS)	" " Diego Texas
219 (1-111)	Deposit Slips " "
220 (A-O)	Ledger Sheets Diego Texas
221	Ledger Sheet - State Bank Diego Texas
222	" " " " " "
223 (A-E)	Deposit Slips " "
224	Ledger Sheet " "
225	" "

(numbers used in last
Dist Ct)

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

U. S. A.

vs.

Bruce B. Pace, et al

CR NO. 12,829

Defts EXHIBITS

NOS.	DESCRIPTION	
226 (A-B)	Ledger Sheet - Tax U.S. Chas W. M. & W.	✓
227	" " " " Reynolds Metal Co.	✓
228	Statement 4-16-54 (6-T-44) Salmi Bauna	✓
229	" 3-6-54 (6-T-86) " "	✓
230 (A-F)	- Sample - Tax Receipts - B.I.S.D.	✓
231 (AA)	Bill of Sale (Engine & Pumps) to R. Cabiness & M. Pierce	✓
232 -	Announcement - opening office of P. Camillo	✓
233.	Check 9-22-53 O. P. Camillo & Elias Chapa $700	✓
234-	Charge to this Court. (1st Trial) ADV. 12-11-56	X
235-	Judgment - prior law suit 3-18-47	X
236-	Photograph - House "Indian Creek"	X
237-	Statement 6-15-54 - Mrs. Christine Ry. 6 T 61	X
238-	Questions & Answers 7-15-54 " " " 6-T-94	X
239.	List of witnesses (All those who may be called at trial) (Subj. amended)	X
240-	List of Govt. Exhibits - prior trial	X
241	" " Defts " " "	X

Atty. for Defendants

379 MOTION FOR FIXING TIME FOR MOTION FOR CHANGE OF VENUE

(Filed Dec. 27, 1956)

(Caption Omitted)

Comes now the United States of America by the United States Attorney and moves this Honorable Court to fix a time by which any motion for change of venue must be filed by the defendants herein, and in connection therewith would respectfully show the Court the following:

1. The first trial of the instant cause began on November 7 and concluded December 11, 1956, in Houston, Texas, resulted in a mistrial, and all defendants remain to be tried again.

2. In the consideration of this and numerous other cases to be set for trial in January 1957 and succeeding months, it is contemplated that the United States Attorney will request that this cause be set for trial January 28th.

3. The United States Attorney is informed that the defendants contemplate moving for a change of venue from Houston, Texas.

4. If such a motion for change of venue is to be made by the defendants, it should be made at such time as will enable the Court to give consideration to the motion prior to January 28th. It is anticipated that the retrial of this case will take approximately four weeks. If no motion for change of venue is contemplated by the defendants, or if such motion is made and overruled by the Court, then settings for numerous other cases should be made at

a date subsequent to the estimated termination of the instant case. If such motion for change of venue is made and granted, then the Court must set other cases for trial in Houston the week of January 28th and subsequent weeks.

5. Federal Rule of Criminal Procedure No. 22 provides that "A motion to transfer under these rules may be made at or before arraignment or at such time as the Court or these Rules may prescribe."

WHEREFORE, for the above stated reasons the United States of America respectfully moves that this Honorable Court fix the date of January 14, 1957, as the date by which any motion for change of venue on behalf of the defendants must be made.

Under the Rules this motion is noticed for the Court's Motion Calendar for Monday, January 7, 1957.

Respectfully submitted

MALCOLM R. WILKEY
Malcolm R. Wilkey
United States Attorney

I hereby certify that a copy of this motion has been sent through the U. S. mails, postage prepaid and properly addressed, to Percy Foreman, Esq., 1116 Capitol Avenue, Houston, Texas, attorney for all defendants.

MALCOLM R. WILKEY
Malcolm R. Wilkey

Dated: 27 December 1956.

381

ORDER

(Filed Jan. 8, 1957)

(Caption Omitted)

BE IT REMEMBERED that on the 7th day of January 1957, came on for hearing the motion of the United States of America for fixing time for motion for change of venue, all parties appearing by counsel, and the Court after considering said motion and the argument of counsel, and being of the opinion that such motion should be granted and that any and all motions by the defendants to transfer this cause should be made and filed on or before January 14, 1957.

It is, therefore, ORDERED, ADJUDGED and DECREED that any and all motions by the defendants to transfer this cause must be made and filed on or before January 14, 1957, to which ruling of the Court the defendants, by their counsel, then and there in open court excepted.

JOE INGRAHAM
United States District Judge

APPROVED AS TO FORM:

Percy Foreman
Attorney for all Defendants

MALCOLM R. WILKEY
Malcolm R. Wilkey
Attorney for United States of America

Entered at Houston, Texas,
this 8th day of Jan., 1957.
EOB:cp

382 REPORTER'S TRANSCRIPT OF ALL PROCEEDINGS ON VOIR DIRE EXAMINATION OF JURORS, HELD ON 3-11-57.

AND

ORDER GRANTING MOTION FOR MISTRIAL, 3-12-57.

383 MORNING SESSION—MARCH 11, 1957

The Court: Good morning, ladies and gentlemen. The first order of business will be the empaneling of the jury.

I will propound to you a number of questions which will bear upon your qualifications to serve as jurors in this court, but you will first be administered an oath by the Court to give true answers to questions, and I will ask you all now to please rise and the oath will be administered.

(Whereupon the oath was thereupon administered by the Clerk of the Court.)

The Court: There are how many, 76 aren't there?

The Clerk: Seventy-seven.

The Court: There are 77 of you. I will propound the questions to you as a group, and I want each of you to consider that the question is asked directly of you.

First, are you a citizen of the United States and of the State of Texas? Is there anyone who would answer that question no? If so, would you please rise.

I want to explain that you have taken an oath to give true answers to questions, and your silence when you should

speak out will be considered an answer. Now, I am going to ask if you are residents and citizens of one of the counties of the Houston Division of the Southern District. There are twelve counties in the Houston Division. So that you may correctly answer that question, I will now instruct the Clerk to read aloud the names of the twelve counties in the Houston Division.

Those counties are:

The Clerk (Reading): Brazos, Colorado, Fayette, Grimes, Harris, Madison, Montgomery, Polk, San Jacinto, Trinity, Walker and Waller.

The Court: I will now ask if you are a resident and citizen of one of the counties of the Houston Division? Is there anyone who would answer that question no? If so, please rise.

(No response.)

Are you a qualified voter of one of these counties of the Houston Division of the Southern District? Is there anyone who would answer that question no? You will rise, please.

(No response.)

Let me say in that respect that your failure to pay a poll tax does not disqualify you to sit as a petit juror. I will explain the qualification of a qualified voter. You must be more than 21 years of age; you must have been a resident of the State of Texas for more than 12 months, and a resident of the county for more than six months. Failure to pay a poll tax does not disqualify you to sit as a juror in this court. I see you are all now seated. Thank you.

Are you a freeholder within the State of Texas or a householder within one of the counties of the Houston Division? Now, before answering that question, I will explain what is meant by a freeholder and a householder, and I will then ask a question. A freeholder: If you own land or an interest in land any place in the State of Texas, then you are a freeholder within the State. If you are the head of a family, that is, if you are a married man, you are the head of a family, or a married woman, you come within that qualification. We now have women on juries, and it is considered an equal partnership, and if you are a widow or widower with children, you are the head of a family, and even though you do not own land, if you rent for them a house, apartment, or room, then you qualify as a householder within the county. I will now ask the question:

Are you a freeholder within the State of Texas or a householder within one of the counties of the Houston Division? Is there anyone who would answer that question no? I see one lady standing. Is there anyone else who would answer that question no?

What is your name, please?

Venirman: Thelma F. Scott.

The Court: What is your situation, please?

Venirman: I rent an apartment.

The Court: Are you married?

Venirman: No.

The Court: Do you have children?

Venirman: None living with me.

The Court: You are not the head of a family under the definition given? You live alone, on rented property?

Venirman: Yes.

The Court: Do you own land or an interest in land any place in the State of Texas?

Venirman: No.

The Court: Very well. It is the Court's opinion you are not qualified to serve as a juror, so Thelma F. Scott, No. 51, is excused and you may—I will advise that your pay for reporting here today will be mailed to you, however, I will announce now if there are any of you who need it, as you are excused, you may go to the Clerk's office and receive your checks.

You are excused, Mrs. Scott.

I will pass to the next question. Are you able to speak, read, write and understand the English language? Is there anyone who would answer that question no? I see one gentleman standing.

Venirman: William Abramski.

The Court: Very well. What is your situation?

Venirman: I can't read or write.

The Court: Very well. You are excused.

I see one other gentleman standing. What is your name?

Venirman: Perrard.

The Court: What is your situation?

Venirman: I can't read much and I can't write too well.

The Court: You can't read much and you can't write too well. I don't think you are required to read well or to write well. Some of my most learned friends write a poor hand. Do you read at all?

Venirman: Mighty little.

The Court: How much—how well do you read, can you tell me?

Venirman: Just as well as no good at all, like I say.

The Court: Very well. Mr. Perrard, I am going to excuse you. You are excused. No. 12, Edmond Perrard.

Your name, please?

Venirman: Alan Miller.

The Court: What is your situation?

Venirman: I can't read or write.

The Court: Very well. You are excused.

I will pass to the next question. Have you served as a juror in this Court at any time within the past twelve months? Is there anyone who would answer that question yes?

(No response.)

Have you ever been convicted of a felony from which you have not received a full pardon? Now in that respect, I want to make this explanation so you will freely understand the question. You may not know what a felony is. A felony generally is a crime, and it is considered the greater degree of crime. The degrees of crimes are felonies, the greater degree, and misdemeanors, which are the lesser

degree. The line of demarcation between a felony and misdemeanor is that any crime or offense which is punishable by imprisonment for more than one year is a felony. It is possible for one to be convicted of a felony and not be imprisoned for more than one year. I am speaking now of the authorized maximum punishment. One convicted of a felony may be in prison for less than a year or he may pay a fine, but if he had been convicted of a crime which is punishable, not punished, but punishable for imprisonment for more than one year, that is a felony. In view of that explanation, I will again ask the question, have you ever been convicted of a felony from which you have not received a full pardon? Is there anyone who would answer that question yes?

(No response.)

I will move on to the next question. Are you now under indictment or other legal accusation for theft or any felony? Is there anyone who would answer that question yes?

(No response.)

Ladies and gentlemen, by your answers it appears that all of you are qualified to serve as jurors in this Court. I will now ask if there are any of you who have any valid excuses to present why you should not serve as jurors? I will ask that anyone who has an excuse to present to please rise.

Very well. I will take them in order.

What is your name?

Venirman: Y. O. Sedita.

The Court: What is your excuse?

Venirman: I have a business place.

The Court: That is not a valid excuse. You may be seated. I will state to all, if your reasons for excuse is that you have a business or employment, that is not a valid excuse. I will pass to the next gentleman.

What is your name?

Venirman: Herman Bering. I recently buried my son-in-law, and I had to move my daughter and her three little children in the last few weeks, and they are not settled yet, and it is an obligation I have to take care of.

The Court: Do the children have parents?

Venirman: Just my daughter.

The Court: Is she the mother?

Venirman: She is.

The Court: And she with the children?

Venirman: They are with me.

The Court: I believe I will have to deny your excuse. You may be seated.

Your name, please?

Venirmate: Routte.

The Court: John D. Routte?

Venirman: Yes, sir.

The Court: Very well. What is your excuse?

Venirman: My excuse is that I am sick.

The Court: How long have you been sick?

Venirman: Over a year now.

The Court: What is your trouble?

Venirman: I suffer with my bladder.

The Court: Considering your condition, do you think you could sit as a juror?

Venirman: I will give it a try.

The Court: I don't want you to try. I am asking you what you can do. You tell me what you can do.

Venirman: It does interfere with my sitting a long time. I would rather, if you can, to excuse me.

The Court: Under those circumstances, I think you should be excused and you are excused.

Venirman: Thank you very much.

The Court: Your name, please?

Venirman: Russo.

The Court: And what is your excuse, Mr. Russo?

Venirman: I am under medical care.

The Court: Yes, I have a note here from Dr. Robertson. Very well, you are excused, Mr. Russo.

This gentleman, please, your name?

Venirman: W. T. Shaw.

The Court: Very well, sir.

Venirman: I have a medical defect and a ranch and farm, and I have no one in my place.

The Court: I can't consider the ranch and farm. Tell me about your medical defect.

Venirman: Kidney defect.

The Court: How long have you had it?

Venirman: I would say four years.

The Court: You know your situation. Would you be able to sit as a juror?

Venirman: Well, I would say no. I don't have no grudge being a juror.

The Court: I am going to question your physical situation. Would it interfere with your sitting as a juror?

Venirman: Yes.

The Court: Very well. You are excused.

What is your name?

Venirman: Jack S. King.

The Court: What is your situation?

Venirman: I am a student at the University of Houston.

The Court: You are offering that as an excuse?

Venirman: I didn't know whether you classified that or not. I go at night.

The Court: You normally work every day?

Venirman: Yes.

The Court: Well, I doubt if you will be kept here more than your normal work hours, so I will have to decline your excuse.

Ladies and gentlemen, it appears that you are all qualified jurors, qualified to serve as jurors in this Court, and I will ask that you again rise and take the oath to serve as jurors in this Court.

(Whereupon the oath was administered to the panel of venirmen by the Clerk.)

The Court: Ladies and gentlemen of the jury panel, the Clerk will now have to prepare a list of your names. The names will be mixed and the list will show your names and occupation, and the county of your residence. During that time, the Court will call the docket for the week and conduct some other matters that should properly be done out of the presence and hearing of the jury panel, so you will be excused for 25 minutes. At the end of 25 minutes, will you be back in this courtroom, and you will again be arranged in a new seating order.

Thank you, ladies and gentlemen.

(The following proceedings were held out of the presence and hearing of the jury panel.)

The Court: Gentlemen, I will now call the docket of criminal cases set for trial this week. First is Criminal Number 12829, the United States vs George B. Parr, et al.

Mr. Wilkey: The Government is ready, Your Honor.

Mr. Foreman: The defendant is ready, Your Honor.

The Court: Both parties announce ready in the Parr case, which leads me to the conclusion no other case will be reached this week, and the attorneys, defendants, and witnesses in all other cases set for trial this week are excused subject to call within—on 24-hour notice. The Court is at recess.

(Short recess.)

The Court: Ladies and gentlemen of the jury panel, I will now ask you a number of questions which will bear upon your qualifications to serve as jurors in a particular case. You have previously qualified as jurors. We are now ready to try the case of the United States vs George B. Parr, and others. May I speak to counsel at the bench?

(Off the record discussion at the bench.)

The Court: Are all the defendants at the counsel table?

Mr. Foreman: Yes, Your Honor.

The Court: I will call the names of the defendants one at a time, and as your names are called, I want you to rise and face the jury panel so they can all see you, and I will ask the jury panel if you know the defendant who is standing.

First I want to call the Defendant George B. Parr. Please rise and face the jury panel. I will ask if any of you know the Defendant George B. Parr, who is standing?

(No response.)

Obviously none of you do.

The next is D. C. Chapa. Do any of you know the Defendant D. C. Chapa who is now standing?

(No response.)

The next is B. F. (Tom) Donald, Jr. Do any of you know Mr. Donald who is now standing?

(No response.)

You may be seated.

The next is Defendant Jesus G. Garza. I will ask if any of you know the Defendant Jesus G. Garza?

(No response.)

The next is Santiago Garcia. Will you turn so the jurors behind can see you? Do any of you know the Defendant Santiago Garcia?

(No response.)

Next is Octavio Saenz. Do any of you know the Defendant Octavio Saenz?

(No response.)

Next is Jesus Oliveira. Do any of you know the Defendant Jesus Olivieira?

(No response.)

Next is O. P. Carrillo. Do any of you know the Defendant O. P. Carrillo?

(No response.)

Next is Defendant Oscar Carrillo, Sr. Do any of you know the Defendant Oscar Carrillo, Sr.?

(No response.)

You may be seated.

Also joined as defendants are two banks, the Texas State Bank of Alice at Alice, Texas, and the San Diego State Bank at San Diego, Texas. I will ask if any of you know any of the officers or management personnel of either of said banks, the Texas State Bank of Alice, Alice, Texas, or the San Diego State Bank at San Diego, Texas, or ask if any of you have ever done any business with either of these banks? If so, will you please rise. I see two gentlemen standing. I assume only two answered that question in the affirmative.

The first gentleman in the front row, what is your name, please?

Juror: Howell B. Jones.

The Court: Howell B. Jones?

Juror: Yes, sir.

The Court: What is your situation?

Juror: I know Mr. Gibbons Parr very well. He is a friend of mine.

The Court: Is he an officer in one of these banks?

Mr. Foreman: President, Your Honor, of the Texas State Bank at Alice.

The Court: President of the Texas State Bank of Alice?

Mr. Foreman: Yes, Your Honor.

The Court: I want you to remain standing, please.

Mr. Wilkey: I believe that is to be corrected. He was vice president at the time concerned in this case, and prior to the bank going out of business.

Mr. Foreman: That is right. He was the executive officer.

The Court: He was executive officer of the Texas State Bank of Alice?

Juror: Yes, sir.

The Court: Have you done any business with the bank?

Juror: No.

The Court: Do you know any other of the personnel of the bank?

Juror: No, sir.

The Court: How well do you know Mr. Parr?

Juror: We were in the cattle business, and we were together here in the show here for the last six or eight years.

The Court: You say "We were in the cattle business." What do you mean?

Juror: No partnership. I am in the cattle business and he is too. I have visited in his home.

The Court: And have you ever done any business with him?

Juror: No, sir.

The Court: How long have you known him?

Juror: About ten years.

The Court: And has he visited in your home?

Juror: No, sir.

The Court: Considering that you have known Mr. Gibbons Parr, who is an officer of the Texas State Bank of Alice, and considering that that bank appears as a defendant in this case, would those facts, considering further that if you should be selected as a juror to try this case, do you believe that considering all these facts that the fact that you know Mr. Gibbons Parr, would that in any way bias or influence your judgment to the extent it would disqualify you to serve as a juror in this case?

Juror: No, sir.

The Court: And if you are selected as a juror to try this case, would you try it fairly on the evidence as you see it?

Juror: Yes, sir.

The Court: Very well. You may be seated. This other gentleman, please? What is your name?

Juror: J. W. Mickler.

The Court? What is your situation, sir?

Juror: I sold some equipment that was donated to the Alice schools.

The Court: You sold equipment to the Alice schools?

Juror: Yes, to the bank, that the bank had donated to the schools.

The Court: The Texas State Bank of Alice donated to the schools?

Juror: A sports timer.

The Court: I didn't understand.

Juror: A sports timer. A football scoreboard.

The Court: How long ago was that?

Juror: Last year.

Mr. Wilkey: Your Honor, that is not the same bank. That is the First State Bank of Alice. That would not be concerned with this case or this indictment. I believe I am correct on that, Your Honor.

The Court: Do you recall now which bank it was?

Juror: It was my understanding both banks were to donate this device to the schools.

The Court: Your business is the selling of equipment, an electrical business?

Juror: Yes.

The Court: Considering you have transacted business with the School District in Alice, and considering that the Alice banks and possibly the Texas State Bank of Alice may have contributed the funds, and considering further that if you should be selected as a juror to try this case, do you believe the facts related would in any way influence you or would it bias your judgment as a juror in this case, and if you are selected as a juror to try this case, would you try it fairly on the evidence as you see it?

Juror: Yes, sir.

The Court: Very well, sir. You may be seated.

Ladies and gentlemen of the jury panel, this is a criminal case against nine natural persons, nine men and two banks, which are State banking corporations. The defendants are charged in 20 counts. The Defendant George B. Parr is charged in all 20 counts. The Defendant D. C. Chapa is charged in all 20 counts. The Defendant B. F. (Tom) Donald, Jr. is charged in all 20 counts. The Defendant Jesus Garza is charged in all 20 counts. The Defendant Santiago Garcia is charged and triable on Counts 4, 5, 8, 13, 14, 15, 17, 18, 19 and 20 only. The Defendant Octavio Saenz is charged in all 20 counts. The Defendant Jesus Oliveira is charged and triable only on Count 20. The Defendant O. P. Carrillo is charged and triable only on Count 20. The Defendant Oscar Carrillo, Sr. is charged and triable on all 20 counts. The Defendant Texas State Bank of Alice is charged and triable on all 20 counts. The Defendant San Diego State Bank, San Diego, Texas, is charged and triable only on Counts 1, 2, 3, 7, 10, 11, 12, 16 and 20.

The first 19 counts of the indictment, that is, Counts 1 through 19, each charge that the defendants devised a scheme and artifice to defraud, and used the mails in furtherance thereof. Count 20 is a general conspiracy count, which charges that all defendants entered into a conspiracy to violate the laws of the United States and that they conspired with each other to use the mails to defraud for the purpose of defrauding the Benavides Independent School District, the taxpayers of the Benavides Independent School District, and the State of Texas. I will further want to advise you that the alleged offenses are alleged to have taken place beginning in 1949 and continuing up into the year 1953. Is that correct?

Mr. Wilkey: Your Honor, until February of 1954, I believe.

The Court: Until February of 1954.

I will ask if any of you have knowledge from any source of the offenses for which these defendants stand charged? If so, will you please rise? Does anyone have any prior knowledge? I see two gentlemen who have now stood. I will ask the question again, do any of you have any prior knowledge of the offenses for which these gentlemen stand charged? These gentlemen and the two banks? Very well

The gentlemen standing in the front row, what is your name, sir?

Juror: J. H. Steadman.

The Court: J. H. Steadman?

Juror: My knowledge is what I read in the paper.

The Court: Do you have any knowledge other than knowledge which you have gained through reading the newspapers?

Juror: No, sir.

The Court: I will ask you if you have formed any opinions regarding this case?

Juror: No, sir.

The Court: If you are selected as a juror to try this case, I will ask you if you will try it fairly on the evidence as you hear it and as you see it?

Juror: Yes, sir.

The Court: Will you place out of your mind any knowledge that you may have gained through reading the newspapers?

Juror: Yes, sir.

The Court: Very well. You may be seated.

The other gentleman, please?

Juror: Gordon Dillard.

The Court: Gordon Dillard. From what source is your prior knowledge gained?

Juror: Newspapers.

The Court: Do you have prior knowledge from any other source?

Juror: No, sir.

The Court: Considering that you have read of these alleged offenses in the newspapers, I will ask you if you have formed any opinions regarding the case?

Juror: No.

The Court: One way or the other, either in favor of or against these defendants?

Juror: No.

The Court: And if you are selected as a juror to try this case, will you try it fairly on the evidence as you see it and as you hear it?

Juror: Yes, sir.

The Court: Very well, sir. You may be seated.

There is one other gentleman now standing. I see another one standing. Very well. Now, you have heard the question. If anyone else would answer the question yes, I want you to now rise or forever hold your peace. Do any of you have any prior knowledge of this case? Is everyone now standing who is going to stand? Everyone who is going to answer that question yes? Very well.

What is your name, sir?

Juror: Moe Klein.

The Court: Mr. Klein, No. 17.

And what is your name, sir?

Juror: Robert E. Schuhmann.

The Court: And your name, sir?

Juror: B. G. Griscom.

The Court: And your name, sir?

Juror: Robert A. Ernst.

The Court: This gentleman in the front row?

Juror: Ferrel G. Brown.

The Court: And your name?

Juror: Herbert Hoech.

The Court: I will propound this question to you six gentlemen who are now standing. First let me ask, Mr. Moe Klein, what is the source of your prior knowledge?

Juror: Only information I have read in the newspaper.

The Court: From any other source?

Juror: No, sir.

The Court: Very well. And Mr. Schuhmann, what is the source of your prior knowledge?

Juror: The same thing, sir. Newspapers.

The Court: Do you have any other source?

Juror: No, sir.

The Court: Mr. Griscom?

Juror: Just the headlines in the paper.

The Court: Do you have information from any other source?

Juror: No.

The Court: Mr. Robert A. Ernst?

Juror: Newspapers, plus the fact that a boy talked to me later in that vicinity.

The Court: What vicinity?

Juror: Refugio.

The Court: Someone talked to you about this case?

Juror: I did talk to him about it.

The Court: Did that person know you were summoned to serve on this jury?

Juror: No, sir.

The Court: Then is your knowledge limited to what you have read in the newspapers and what your friend from Refugio told you?

Juror: Yes, sir.

The Court: Mr. Brown, what is your situation?

Juror: What I have read in the papers.

The Court: Do you have knowledge from any other source?

Juror: No, sir.

The Court: And Mr. Hoech?

Juror: Newspapers only.

The Court: From any other source?

Juror: No, sir.

The Court: Now, I will ask you six gentlemen who are standing, I want each of you to consider this question is asked directly of you. Have you formed any opinion regarding this case as to the guilt or innocence of the defendants? Have you formed any opinions favorable or unfavorable to these defendants? If there is anyone who would answer that question yes, please raise your hand. I see three hands. Those three are Robert E. Schuhmann, Mr. Ernst, and Mr. Hoech. I want you three gentlemen now to be seated and I will ask you to rise again. That leaves standing Mr. Moe Klein, Mr. Griscom, and Mr. Brown. Let me ask you three gentlemen who are now standing, Moe Klein, Mr. Griscom, and Mr. Brown, each of you have stated you have not formed any opinions. If you gentlemen are selected as jurors to try this case, will each of you try it fairly on the evidence as you see it and as you hear it?

Jurors (Collectively): Yes, sir.

The Court: Very well. You may be seated.

I will now ask that those three gentlemen again rise, Mr. Robert E. Schuhmann, Mr. Robert A. Ernst, and Mr. Herbert Hoech. Each of you has stated that you have formed an opinion. I will ask each of you individually if you believe that you could sit as fair and impartial jurors in the trial of this case.

Mr. Schuhmann?

Juror: Yes, sir.

The Court: You think you can?

Juror: Yes, sir.

The Court: Well, now, will you tell me, not only tell me, I want the information for the benefit of the Government and the defendants, you say you have formed an opinion. What was the nature of an opinion formed by you?

Juror: I feel that a man who reads papers—

Mr. Foreman: May it please the Court, may we ask the juror approach the bench?

(The following proceedings were held at the bench out of the presence and hearing of the jury.)

The Court: I want you to speak in subdued tones.

Juror: I feel any man who reads the papers, as I try to do, and with reasonable intelligence knows the reason these charges are brought against these defendants.

The Court: What reason do you think that is?

Juror: I feel that this is probably the only way that the Government can bring charges against them, since they had no other evidence against them on other counts. They had to put it under the count using the mail to defraud.

The Court: Would that bias or prejudice your judgment either in favor of or against the defendants?

Juror: No, sir, I don't believe it would. I have to tell you this in all fairness. I wish to be honest about the thing.

Mr. Foreman: Your name, please?

Juror: Robert E. Schuhmann.

The Court: Do you gentlemen want to ask any questions?

Mr. Foreman: No, I have no questions. I think he has been very fair.

The Court: Very well, you may be seated.

I will ask that the next gentleman likewise come to the bench. I am going to ask that you speak in subdued tones so what you have to say will be heard only in this little huddle. What can you tell us?

Juror (Ernst): In regard to being on the jury?

The Court: Yes.

Juror: I feel like the defendants are guilty.

The Court: Well, I think that is a disqualification.

Mr. Wilkey: Yes. We will agree the juror has been very fair.

The Court: You may be seated, Mr. Ernst.

Will the other gentleman come to the bench, Mr. Herbert Hoech?

Mr. Hoech, I want to ask you, as I asked the other gentlemen, to speak in subdued tones so what you say will be heard in this little huddle at the bench only.

What is the nature of the opinions you have formed in this case? Give us a full explanation.

Juror: I have read the newspaper accounts. I have read the paper every day, and I don't think you can read anything as widely publicized as this without forming some opinion.

The Court: What opinion have you formed?

Juror: In my mind the defendants are guilty.

The Court: I think that would disqualify Mr. Hoech.

Mr. Foreman: Thank you for your fairness.

The Court: Take your seat please.

(The following proceedings were held in the presence and hearing of the jury panel.)

The Court: Ladies and gentlemen of the jury, the defendants are represented in the defense of this case by Mr. Percy Foreman. I will ask that you please rise.

(Counsel rises.)

Also by Mr. Gilbert Sharpe. I ask that you remain standing, Mr. Foreman. I want Mr. Sharpe to remain standing.

(Counsel complies with the Court's request.)

The defendants are also represented by Mr. Luther Jones, an attorney of Corpus Christi who is not here this morning but may be here later in the trial. I will ask if any of you know Mr. Percy Foreman, Mr. Gilbert Sharpe, now standing before you, or if any of you know Mr. Luther Jones of Corpus Christi who is not here this morning? If any of you would answer those questions yes, you may please rise. I see quite a number standing. I think I had better take them singly.

First, what is your name?

Juror: Giles Donahoe.

The Court: How many do you know?

Juror: Mr. Foreman only.

The Court: How well do you know Mr. Foreman? How long have you known him?

Juror: Fifteen or sixteen years.

The Court: Is your acquaintance with him intimate or casual?

Juror: Casual.

The Court: Can you tell us, is it in business or is it socially?

Juror: I just knew him many years ago, pass him on the street and speak to him.

The Court: Has he ever represented you?

Juror: No, sir.

The Court: Has he ever sued you?

Juror: No, sir.

The Court: Is your acquaintance with Mr. Foreman of such nature that it would bias or prejudice your judgment to serve as a juror at the trial of this case either in favor of or against his clients?

Juror: It would not.

The Court: If you should be selected as a juror to try this case, would you try it fairly on the evidence as you see it?

Juror: Yes.

The Court: The first gentleman in the first row, your name, sir?

Juror: J. H. Steadman. I know Mr. Foreman only casually. Some of his clients have been customers of ours. One time through the transfer of an account, we had customer relations with Mr. Foreman.

The Court: Is that a single transaction or a series of transactions?

Juror: The clients was a series. The transfer was single.

The Court: How long have you known Mr. Foreman?

Juror: Fifteen years.

The Court: And have you had any other relations with him other than those in the nature of which you have explained?

Juror: That is all.

The Court: Considering that you have known Mr. Foreman about 15 years, and the nature claimed by you, considering that he appears here as attorney for the defendants, would those facts in any way bias or prejudice your judgment in this case either in favor of or against his clients?

Juror: No, sir.

The Court: If you are selected as a juror to try this case, would you try it fairly on the evidence as you see it?

Juror: Yes, sir.

The Court: Next gentleman. Mr. Howell B. Jones. Your situation, sir?

Juror: I know Mr. Foreman. He recently represented in a divorce case of a friend of mine against him. It wasn't very pleasant.

The Court: How long have you known Mr. Foreman?

Juror: Ever since he came to Houston.

The Court: How long has that been?

Juror: Fifteen or 20 years.

The Court: I know it has been more than 22 years because I have been here that long. He was here when I arrived. Now, you mentioned that he opposed, appeared as attorney opposing a friend of yours?

Juror: Yes, sir.

The Court: Considering all these facts, would your relations with Mr. Foreman in any way disqualify you to sit as a fair and impartial juror in this case, that is, the fact that he appears here as attorney for the defendants, would it in any way influence your judgment either in favor of or against his clients?

Juror: No, sir.

The Court: And if you are selected as a juror to try this case, would you try it fairly on the evidence as you see it?

Juror: Yes, sir.

The Court: The first gentleman in the second row, your name, please, sir?

Juror: Robert Bishop.

The Court: Your situation, sir?

Juror: Just a casual acquaintance, Mr. Sharpe and Mr. Foreman both.

The Court: How long?

Juror: Approximately a year.

The Court: You know both Mr. Foreman and Mr. Sharpe? You have known each of them about a year?

Juror: Yes, sir.

The Court: Is your acquaintance with them intimate or casual?

Juror: Casual.

The Court: Is it in business or social?

Juror: Well, it would be hard to say either one.

The Court: Considering your relationships with both Mr. Foreman and Mr. Sharpe, would those facts in any way bias or influence you either in favor of or against their clients?

Juror: It would not.

The Court: And if you are selected as a juror to try this case, will you try it fairly on the evidence as you see it, those facts notwithstanding?

Juror: I would.

The Court: Very well, sir. You may be seated.

The next gentleman is Mr. Clifford Guerrant.

Juror: I know Mr. Foreman.

The Court: What is the nature of your acquaintance with Mr. Foreman?

Juror: I have known him about 10 years, just casually.

The Court: Have you ever had any business relations with him?

Juror: No.

The Court: Has he ever represented you, ever sued you?

Juror: No, sir.

The Court: Do you have a social relationship with him?

Juror: No, sir.

The Court: Has he ever visited in your home, or have you visited in his home?

Juror: No, sir.

The Court: Considering that you have known Mr. Foreman casually about 10 years, would your acquaintance with him, as you know it to be, in any way bias or prejudice you in this case either in favor of or against his client?

Juror: No, sir.

The Court: And if you should be selected as a juror to try this case, would you try it fairly on the evidence as you see it?

Juror: Yes, sir.

The Court: Very well, you may be seated.

The next gentleman is E. R. Stallings.

Juror: By reputation only.

The Court: You mean you know him by reputation only?

Juror: Yes, sir.

The Court: Have you ever met him?

Juror: I don't remember whether I have or not. I have seen him on the street.

The Court: How long have you known him or known of him.

Juror: About 10 years, I would say.

The Court: You have known of him about ten years, and you know at sight? You know who he is?

Juror: Yes.

The Court: Considering these facts, considering your knowledge of him by reputation as you know your knowledge to be, would those facts in any way bias or prejudice your judgment in this case either in favor of or against his clients?

Juror: No, sir.

The Court: If you should be selected as a juror to try this case, would you try it fairly on the evidence as you see it?

Juror: Yes, sir.

The Court: You may be seated.

Your name, please, the lady standing?

Juror: Mrs. Jimmie B. Mims.

The Court: Mrs. Jimmie B. Mims?

Juror: Yes, sir.

The Court: What is your situation?

Juror: I know Mr. Foreman and I have been knowing him about 22 years. I knew him through my husband. He goes to him for advice, and that is why I know about him.

The Court: You say you know him through your husband?

Juror: And I have been to his office with my husband, but I have never talked to him but I know about my husband's dealings with him.

The Court: Has he ever represented your husband?

Juror: No, sir. He has been to him for advice.

The Court: Did your husband work for him?

Juror: No, sir, he was seeking advice.

The Court: I didn't understand.

Juror: He was asking him for advice.

The Court: How long ago was that?

Juror: It is, as near as I can remember, it was about four or five years ago, as near as I can remember, but I knew him before that by seeing him on cases in court.

The Court: Now, you say you have known him about 22 years, and you went to his office with your husband about four or five years ago?

Juror: Yes, sir.

The Court: Considering all of your knowledge of Mr. Foreman in the full 22 years you have known him or known of him, and considering you have been to his office, would your knowledge of Mr. Foreman in any way influence your judgment in this case, either in favor of or against his clients?

Juror: Not any whatsoever.

The Court: And if you should be selected as a juror to try this case, would you try it fairly on the evidence as you see it?

Juror: Yes, sir.

The Court: Very well, you may be seated.

And the next is Cecil Murray.

Juror: Yes, sir.

The Court: Your situation?

Juror: I have known Mr. Percy casually for many years, ever since back in the old Polk County days, and when Livingston used to meet in football and baseball.

The Court: You are from Huntsville, and you are old athletic rivals?

Juror: I have known him better through my attorney friend in Huntsville, Mr. Joe Davis. I have met him with Mr. Davis, but I have known him for many, many years.

The Court: Let me ask you if you have ever had any social contacts with him?

Juror: No, sir.

The Court: Has he ever visited in your home, or have you visited in his home?

Juror: No, sir.

The Court: Has he ever represented you?

Juror: No, sir.

The Court: Has he ever sued you?

Juror: No, sir.

The Court: Considering your knowledge of Mr. Foreman over the years you have mentioned, considering he appears here as attorney for the defendants, would those facts as you know them to be in any way bias or prejudice your judgment in this case, either in favor of or against his clients?

Juror: No, sir.

The Court: If you should be selected as a juror to try this case, would you try it fairly on the evidence as you see it?

Juror: I would, Your Honor.

The Court: Very well. You may be seated.

The next gentleman?

Juror: Clinton D. Beaman.

The Court: Your situation, sir?

Juror: I run a service station and I service his car occasionally, is all I know of Mr. Foreman.

The Court: How long have you known him in that manner?

Juror: Oh, about four years.

The Court: You have had no other contact with him other than to service his car for a period of about four years?

Juror: No, sir.

The Court: Considering your relationship with Mr. Foreman in that respect, do you beleive it would in any way bias or prejudice or influence your judgment either in favor of or against his clients?

Juror: No. sir.

The Court: And if you should be selected as a juror to try this case, would you try it fairly on the evidence as you see it?

Juror: Yes, sir.

The Court: Very well, sir. You may be seated

The first gentleman in the next row?

Juror: Louis Bale.

The Court: Speak louder, please.

Juror: I have met Mr. Foreman.

The Court: How long have you known him?

Juror: Oh, I imagine about six or eight years.

The Court: What is the nature and extent of your acquaintanceship with him over the past six or eight years?

Juror: I have just met him and when I see him, I know him.

The Court: Have you had any business or social relations with him?

Juror: His firm represented my wife in a divorce case, but I never met him through that.

The Court: Was that case against you?

Juror: Yes, sir.

The Court: How long ago was that?

Juror: About eight or nine years ago.

The Court: Considering your acquaintance with Mr. Foreman in the manner related, and considering further that he represented your wife in a divorce suit against you—

Juror: It was his law firm.

The Court: Did he himself handle it, or did someone else?

Juror: No, sir, someone else.

The Court: Considering those facts as you know them to be, would those facts in any way bias or influence or prejudice your judgment in the trial of this case either in favor of or against his clients?

Juror: No, sir.

The Court: And if you should be selected as a juror to try this case, would you try it fairly on the evidence as you see it?

Juror: Yes, sir.

The Court: Very well. You may be seated.

The next gentleman is Mr. Jesse C. Barbour.

Juror: I know Mr. Foreman.

The Court: How long have you known him?

Juror: About 16 years.

The Court: And what is the nature of your acquaintance with Mr. Foreman?

Juror: He has represented our firm, and since then we have done business with him over a number of years.

The Court: What kind of business have you done with him?

Juror: Furnishings, interior decorator.

The Court: You do interior decorating and sell furniture?

Juror: Yes, sir.

The Court: You say you have done business with him over a number of years. In other words, he is your customer?

Juror: Yes, sir.

The Court: Considering those facts as you know them to be, would that in any way bias or prejudice or influence your judgment in the trial of this case either in favor of or against his clients?

Juror: No, sir, it wouldn't have any effect.

The Court: And if you should be selected as a juror to try this case, would you try it fairly on the evidence as you see it?

Juror: Yes, sir.

The Court: Very well. The next genleman is Mr. F. F. Baldwin, No. 62.

Juror: Yes, sir.

The Court: What is your situation, please, sir?

Juror: Mr. Foreman is one of the passengers on my bus. He rides with me occasionally, the East and West Shopper's Bus. I don't believe he even recognizes me out of uniform.

The Court: How long have you known Mr. Foreman in that way?

Juror: Between five and six years, sir. He rides about once a month. His assistants ride more often.

The Court: Considering that you have known Mr. Foreman for five or six years and he and his staff are good customers of your bus, let's say—

Juror: He isn't a very good one. He doesn't ride much.

The Court: Considering all of those facts as you know them to be, would the facts in any way bias or influence or prejudice your judgment in the trial of this case either in favor of or against his clients?

Juror: No, sir.

The Court: And if you should be selected as a juror to try this case, would you try it fairly on the evidence as you see it?

Juror: Yes, sir.

The Court: Very well, you may be seated.

The next gentleman?

Juror: James Frank Hammond. I have known Mr. Foreman on sight only for the past 25 or 30 years.

The Court: Sight only for the past 25 or 30 years?

Juror: Yes.

The Court: Have you ever been introduced to him?

Juror: No, sir.

The Court: Have you ever had any business or social relationship of any kind?

Juror: No, sir.

The Court: Considering that you know him by sight and you know him by reputation for the last 25 or 30 years, I will ask if those facts as you know them to be would in any way bias or prejudice or influence your judgment in the trial of this case, either in favor of or against his clients?

Juror: No, sir.

The Court: And if you should be selected as a juror in this case, would you try it on the evidence as you see it?

Juror: Yes, sir.

The Court: The next gentleman, Mr. Delma J. Hebert.

Juror: I have known Percy Foreman for the last 22 years just by sight.

The Court: Do you know him otherwise?

Juror: No, sir.

The Court: Have you ever been introduced to him?

Juror: One time.

The Court: How long ago was that?

Juror: About a year and a half ago.

The Court: Have you ever had any business or social relations with him?

Juror: No, sir.

The Court: Considering you have known him by sight and reputation for 22 years, and you met him a year and a half ago, and considering your entire relations with him as you know them to be, would those facts in any way bias or prejudice or in any way influence your judgment in the trial of this case either in favor of or against his clients?

Juror: No, sir.

The Court: If you should be selected as a juror to try this case, would you try it fairly on the evidence as you see it?

Juror: I will.

The Court: The Government is represented in the prosecution of this case by United States Attorney, Mr. Malcolm Wilkey. Will you please rise?

And Assistant United States Attorney, Mr. Edgar O. Bottler. I will ask if any of you know Mr. Wilkey or Mr. Bottler? If so, will you please rise?

You other genlemen may be seated.

Mr. Wilkey: Your Honor, Mr. Harold Freeman will also be at the counsel table. Perhaps he should rise and be identified too.

The Court: Anyone else?

Do any of you know Mr. Freeman, the gentleman who is now standing? Obviously none of you do. I will recognize the one gentleman standing.

I will ask your name?

Juror: Delma J. Hebert.

The Court: Which of these gentlemen do you know?

Juror: Mr. Bottler.

The Court: How long have you known Mr. Bottler?

Juror: Approximately four weeks.

The Court: What is the nature of your relationship?

Juror: I went in Mr. Bottler's office to get a court order to have an exhibit released to me about four weeks ago.

The Court: Is that the only connection with Mr. Bottler?

Juror: Yes, sir.

The Court: Do you have any other relationship or acquaintance with him?

Juror: No, sir.

The Court: Considering you know Mr. Bottler in the manner stated, would that fact influence your judgment in this case either in favor of or against any parties to this suit?

Juror: No, sir.

The Court: If you should be selected as a juror to try this case, would you try it fairly on the evidence as you see it?

Juror: I will.

The Court: Very well. You may be seated.

I will ask if any of you have any particular bias or prejudice in this type of case? If so, will you please rise?

(No response.)

Obviously none of you have.

I have before me a number of suggested questions, which are suggested by the Government, are they not?

Mr. Bottler: That is correct, Your Honor.

The Court: Have you served adverse counsel with copies of your request?

Mr. Bottler: Yes, Your Honor.

The Court: I would like to discuss these requests with counsel at the bench, please.

(The following proceedings were held at the bench out of the presence and hearing of the jury panel.)

The Court: It is my opinion most of these have been answered. These have been asked in one way or another, and those that have not been, there is some question in my mind whether they are proper questions. In other words, "Have you ever lived" in a long number of counties, and had any friends or relatives that have lived in a long number of counties. There is some question in my mind whether they are properly qualifying questions. What does the defense have to say?

Mr. Foreman: We have no objection to their being asked. We know why he wants them, and frankly, if the Court has no objection, we join with them in the request. This is highly controversial one way or the other.

The Court: For instance, if we get into this thing, every time anyone is challenged in Harris County—

Mr. Foreman: Your Honor, we understand those to not disqualify him, but he would use—

The Court: Do I understand you just want the question?

Mr. Foreman: Yes, he wants it to exercise his peremptory challenge.

The Court: Suppose I ask if anyone has ever lived in Duval County and a man stands. You just want has name, or do you want to further interrogate?

Mr. Wilkey: I would just ask it one time.

Mr. Foreman: I'd read them off one at a time. I don't think you will find many.

The Court: Supposing a man arises and says, "I live in Live Coak County." Is there anything else I have to ask him?

Mr. Wilkey: Yes, it is suggested you ask him how long and the business engaged in.

The Court: Is that satisfactory?

Mr. Foreman: It is agreeable.

The Court: I don't expect to prolong it any further than that.

Mr. Wilkey: No, sir.

The Court: Let's pass on.

"Have you ever been in a lawsuit or dispute with the United States?"

Mr. Wilkey: This question can be omitted, and this right here has been taken care of.

The Court: Almost everyone has some dispute with the Government every time they prepare their income tax return.

Mr. Wilkey: This is for information only.

The Court: How far can I go with it?

Mr. Wilkey: Just ask what was the nature of the lawsuit or dispute. You see, there may have been—

The Court: In other words, the purpose of this is for information only?

Mr. Foreman: Only on peremptory challenges, I imagine.

The Court: Very well. I will ask them.

Mr. Wilkey: It is the same thing as counsel interrogating the jury in State Court.

The Court: Do you have anything further?

Mr. Foreman: I will have some. I didn't know you wanted them in writing.

The Court: When we reach that, I will recognize you.

Mr. Foreman: I don't have them written out.

Mr. Wilkey: We ask that the questions be submitted to the Court like we have done. We understood that is the procedure.

The Court: If he has suggested questions, I will consider them.

Mr. Wilkey: I think we should come to the bench like we have done.

Mr. Foreman: I have no objection to doing that. It won't take five minutes with my questions, but I would like to do it at noontime.

The Court: I would like to conclude before noon. I will ask these questions for information only.

Mr. Foreman: The questions I am going to ask—

The Court: Let's wait until we reach that.

(The following proceedings were held in the presence and hearing of the jury panel.)

The Court: I am now going to ask compound questions. I will ask if any of you have ever lived in a number of counties, and if your answer in any respect would be yes, please rise.

Have any of you ever lived in Duval County, Jim Wells County, Webb County, Brooks County, Jim Hogg County, Zapata, Nueces, McMullen, LaSalle, or Live Oak? Would anyone answer any of those questions yes?

I see one gentleman standing. What is your name, please?

Juror: J. E. Stedman.

The Court: How many of these counties have you resided in?

Juror: I don't recall, but I used to work between Alice and Robstown.

The Court: How long ago?

Juror: 1930, I believe. Somewhere in there.

The Court: What kind of work were you doing there?

Juror: I was working—

The Court: Can you gentlemen hear the juror?

Mr. Wilkey: Yes, Your Honor. We were closer and I can hear you.

Juror: I worked in a gasoline plant.

The Court: For how long?

Juror: It was seven or eight months.

The Court: And in what capacity?

Juror: I worked as a finisher, run the mixer.

The Court: Very well. You may be seated. Thank you.

Is there any juror who has ever had a lawsuit or dispute with the United States Government? If so, will you please rise?

I see two gentlemen standing. The gentleman in the front row?

Juror: J. H. Steadman. It was a dispute, There hasn't been any litigation. It is a technicality on taxes. They have served me notice of deficiency, and I have until the first of the month to answer. I obtained counsel on it, but it is a technicality of some income I consider a deficiency and the Government considers normal income.

The Court: I hope you will resolve your dispute. The other gentleman is Mr. Barbour?

Juror: Yes, sir.

The Court: What is your situation?

Juror: It was income tax.

The Court: How long ago?

Juror: 1949.

The Court: Is that satisfactory, gentlemen?

Mr. Wilkey: Thank you, Your Honor.

The Court: Is there any juror—I am afraid this is going to bring up everybody—is there any juror who has a relative or friend who has ever had a lawsuit or legal dispute with the United States Government? Is there anyone who would answer that yes?

(No response.)

They know different kind of people from those that I know.

I will ask if there are any further questions which either side wishes to request be asked of the jury panel? I will first recognize the defendant.

Mr. Foreman: Shall I state the questions?

The Court: If you have any such requests, I suggest that they be made at the bench.

(The following proceedings were held at the bench out of the presence and hearing of the jury panel.)

Mr. Foreman: I had anticipated doing what I said before, just ask the question, as I didn't know there had been a change in policy. I would ask do any of them have any opinion concerning George B. Parr that might in any way effect their verdict.

The Court: All right. That is one.

Mr. Foreman: The second is the same question with reference to Duval County.

The Court: All right, sir.

Mr. Foreman: Are any of them related to any peace officer or anyone who has ever been.

The Court: Or have been a peace officer?

Mr. Foreman: I know some of them show by their occupations to be now, but other than that, any of them have ever been a peace officer, and the next—

The Court: All right, sir.

Mr. Foreman: Next, are any of their relatives ever peace officers. Have any of them ever been members of a school board, if so where and when, and in what capacity did they serve. The same thing with reference to having been a tax assessor or collector.

The Court: All right, sir.

Mr. Foreman: And the same thing with reference to any banking experience that any have ever had, worked in a bank, and if so when and where. Have any of you ever served as a grand juror in either State or Federal Court.

Mr. Sharpe: About this press business, we have had a half dozen that said they had information from the press. Certainly there are more than that that have read about this thing.

Mr. Foreman: I would like to know if any of them ever formed or expressed an opinion on the guilt or innocence of any defendant named in this indictment. I know you presented that in another form.

The Court: Just a moment. Have any of you ever formed or expressed an opinion—

Mr. Foreman: Concerning the guilt or innocence of any defendant named in this indictment.

The Court: Anything else?

Mr. Foreman: We might write after that do you now have any opinion concerning the guilt or innocence of any defendant. I believe that is all.

The Court: What says the Government?

Mr. Wilkey: We have no objections, Your Honor.

The Court: All right.

(The following proceedings were held in the presence and hearing of the jury panel.)

The Court: Ladies and gentlemen of the jury, I will ask if any of you have any opinion concerning the Defendant George B. Parr which might in any way affect your verdict? Is there anyone who would answer that question yes? If so, will you please rise?

I will ask the same question if any of you have any opinion relating to Duval County which might affect your verdict in this case? If so, will you please rise?

I will ask if any of you are now or if you have ever been peace officers? If so, will you please rise?

I see four gentlemen standing. The first gentleman is Mr. Jones, Howell B. Jones.

Juror: Yes, sir.

The Court: Are you now a peace officer?

Juror: I have a special deputy sheriff's commission.

The Court: Have you ever had any other experience as a peace officer?

Juror: I held a Ranger's commission once.

The Court: A what?

Juror: Texas Ranger's commission.

The Court: Honorary or active?

Juror: Honorary.

The Court: Were you ever employed? Did you ever receive any pay or salary for serving as a Texas Ranger or a deputy sheriff?

Juror: No, sir.

The Court: How long have you had a special deputy's commission?

Juror: About 30 years.

The Court: Very well.

I will ask counsel if either of you believe holding a special deputy's commission is embracing in the question?

Mr. Foreman: I would like to include it. I usually ask that question also.

The Court: Very well. Considering the fact that you have been a special deputy sheriff, would that fact in any way bias or prejudice you in this case?

Juror: No, sir.

The Court: If selected as a juror to try this case, would you try it fairly on the evidence as you see it?

Juror: Yes.

The Court: This gentleman?

Juror: Herman Bering.

The Court: Your situation?

Juror: I have a special deputy sheriff commission.

The Court: Have you ever been a peace officer in any other capacity?

Juror: No, sir.

The Court: How long have you held a special deputy commission?

Juror: About five years.

The Court: In Harris County?

Juror: Yes, sir.

The Court: Have you ever in any way functioned as a deputy sheriff?

Juror: No, sir.

The Court: Have you ever made any arrests?

Juror: No, sir.

The Court: Conducted any investigation?

Juror: No, sir.

The Court: Ever drawn any pay for your services?

Juror: No, sir.

The Court: Considering your experience as a special deputy sheriff, would that fact in any way bias, prejudice or influence your judgment in this case?

Juror: Not at all.

The Court: If you should be selected as a juror to try this case, would you try it fairly on the evidence as you see it?

Juror: Yes, sir.

The Court: And this gentleman?

Juror: T. H. Sharp.

The Court: No. 36?

Juror: Yes, sir.

The Court: What is your situation?

Juror: I was chief of police in a small town in Arkansas in 1930.

The Court: For how long?

Juror: Three years.

The Court: Is that your full experience as a peace officer?

Juror: Yes, sir, the only one.

The Court: Considering you were chief of police in a small town in Arkansas for three years—would you gentlemen like the town identified?

Mr. Foreman: Please, sir.

Juror: Altheimer.

The Court: Considering your experience there as a peace officer for three years, would that fact in any way bias or influence or prejudice your judgment in this case?

Juror: No, none whatsoever.

The Court: If you should be selected as a juror to try this case, would you try it on the facts, notwithstanding?

Juror: Yes, sir.

The Court: And this gentleman?

Juror: Robert Bishop.

The Court: I see your occupation is listed deputy sheriff.

Juror: Yes, sir.

The Court: In Harris County, Texas?

Juror: Yes, sir.

The Court: How long have you been a deputy sheriff?

Juror: Since April 1st of last year.

The Court: Have you had any prior experience as a peace officer?

Juror: No, sir.

The Court: Considering that you have been a deputy sheriff of Harris County and you are still a deputy sheriff in Harris County and have been for less than a year—

Juror: Yes, sir.

The Court: —would that fact in any way influence or bias or prejudice your judgment in the trial of this case?

Juror: It would not.

The Court: And if you should be selected as a juror to try this case, would you try it fairly on the evidence as you see it?

Juror: I would.

The Court: This gentleman? Your name is?

Juror: J. E. Stedman.

The Court: You are Mr. Stedman, No. 51, Mr. J. E. Stedman. Will you give us your experience as a peace officer?

Juror: When I came to Houston—

The Court: I have difficulty hearing you.

Juror: —I was a deputy constable seven or eight years ago in Shelby County.

The Court: For how long, sir?

Juror: A year or so.

The Court: Is that your only experience as a peace officer?

Juror: I have acted—I don't remember, but I have acted as a deputy for different companies.

The Court: With different companies?

Juror: Yes. I don't remember the dates of it.

The Court: With different companies? You mean you were employed as a company guard or something of the sort?

Juror: Catching people stealing stuff. I would catch them, the officers would take them in.

The Court: Considering your experience as a deputy constable in Shelby County, and considering you have also been employed from time to time by companies in a law

enforcement capacity, protection, enforcement, would those facts in any way bias, prejudice or influence your judgment in this case?

Juror: Not a bit.

The Court: And if you should be selected as a juror to try this case, would you try it fairly on the evidence as you see it?

Juror: To the best of my knowledge.

The Court: And the next gentleman?

Juror: Louis Bale.

The Court: Your experience as a peace officer?

Juror: I carry a commission.

The Court: Deputy sheriff's commission?

Juror: Yes, sir.

The Court: For how long?

Juror: I imagine six or eight years.

The Court: Have you had any other experience as a peace officer?

Juror: No, sir.

The Court: During the time you have been a special deputy sheriff—is that in Harris County?

Juror: Yes.

The Court: —have you ever made any arrests?

Juror: No, sir.

The Court: Conducted any investigations?

Juror: No, sir.

The Court: Received any pay for your services?

Juror: No, sir.

The Court: Considering your experience in that respect, would it in any way bias or prejudice or influence your judgment in the trial of this case?

Juror: No, sir.

The Court: If you should be selected as a juror to try this case, would you try it fairly on the evidence as you see it?

Juror: Yes, sir.

The Court: Very well, you may be seated.

Have any of you ever been a member of a school board? If so, will you please rise?

I see two gentlemen standing.

Your name, sir?

Juror: Moe Klein.

The Court: You live at Flatonia. Would you give us your experience?

Juror: I was a member of the school board at Flatonia Independent School District for nine years, I believe starting in 1936 or 1938 to 1947.

The Court: That is ten years.

Juror: Nine years to be exact.

The Court: Very well, you may be seated.

The other gentleman?

Juror: Cecil Murray.

The Court: Will you give us your experience?

Juror: I am a member of the school board in Huntsville at the present time.

The Court: How long have you been a member, sir?

Juror: A little over one year.

The Court: Very well. You may be seated.

I will ask if any of you have ever been an assessor or collector of taxes?

(No response.)

Obviously none of you have. Have any of you ever—

Mr. Foreman: In that connection, Your Honor, would you ask if they have worked in such an office?

The Court: Have you ever worked in such an office?

I see one man standing.

What is your name?

Juror: R. L. Clifton.

The Court: Would you give us your experience?

Juror: Hidalgo County Water Control & Improvement District No. 6. It is a one-man office in this Water District.

The Court: Where is that located?

Juror: Hidalgo County.

The Court: But where in the county?

Juror: Elsa, and the job was a one-man job and I carried the title of tax collector and assessor. I had to work up the roll, and most of my collections were out of the State, so I handled it by mail. I handled it almost three years.

The Court: What years were they, about?

Juror: It was in the 1940's. It was about 1941 to 1944.

The Court: Very well. Thank you, Mr. Clifton.

Have any of you ever been employed in a bank in any capacity? If so, will you please rise?

I see one lady and one gentleman standing.

We again have Mr. Stedman. Give us your experience.

Juror (Stedman): It has been a long time ago. It was during the summer vacations in the late '20's when I first got out of school, I guess in 1927.

The Court: Where was that?

Juror: The First National Bank of Hattiesburg, Mississippi. It was clerical work, and I guess my whole experience didn't cover over twelve months.

The Court: Very well.

The lady?

Juror: Marguerite Watson.

The Court: Your occupation is listed as bookkeeper, South Main State Bank. How long have you been so employed?

Juror: Three years.

The Court: Have you had any previous banking experience?

Juror: Yes, sir, in Odessa.

The Court: How long?

Juror: Three years.

The Court: And those six years cover your entire banking experience?

Juror: Yes, sir.

The Court: Very well, you may be seated.

Have any of you ever served as grand jurors in either State or Federal Courts? If so, please rise.

We again have Mr. Clifton. What is your situation, Mr. Clifton?

Juror: I was in Federal Court in Brownsville.

The Court: How long ago?

Juror: 1945 or 1946.

The Court: Very well, you may be seated.

Now, Mr. Stedman?

Juror: That is Mr. Jones.

The Court: Excuse me.

Juror (Jones): I was foreman of the Federal grand jury in this building, I think in 1933 or 1935.

The Court: Is that your only experience as a grand juror?

Juror: Yes, sir.

The Court: Very well. You may be seated.

One other gentleman standing?

Juror (Unidentified): I misunderstood you. I was on a petit jury.

The Court: Have any of you ever formed or expressed an opinion concerning the guilt or innocence of any defendant in this trial?

Juror (Hoech): Would you express that again?

The Court: We talked to you earlier. You will not have to answer this question. I will excuse Mr. Hoech and Mr. Schuhman. Mr. Hoech and Mr. Schuhmann need not answer this question.

Have any of you either expressed or formed an opinion concerning the guilt or innocence of any defendant in this case?

(No response.)

Obviously none of you have.

Do you now have any such opinion?

(No response.)

Obviously none of you have.

Do any of you know of any reason why you cannot act as a fair and impartial juror in the trial of this case? If so, will you please rise?

Mr. Foreman: May we approach the bench?

(The following proceedings were held at the bench out of the presence and hearing of the jury panel.)

Mr. Foreman: Your Honor, I wonder if we might ask that each of the jurors stand and give either his residence or address or business? I go a lot by the section of town a man is in in making my strikes, and a lot of those places don't identify them other than the general nature of their business. Some show companies they are with. I want to identify them further. I can't even see them from where I am. I would like to be closer to them when they stand up. I would like to sit at the edge so as to pass judgment on their appearance. I haven't got these men or women identified with their names.

The Court: Will there be any other questions?

Mr. Foreman: That is all. I would like them to state their residence address and the company they are with.

The Court: What says the Government?

Mr. Wilkey: No objection.

Mr. Foreman: We did that before.

The Court: Very well. Yes. There will be no further questions, as I understand it?

Mr. Foreman: No further questions.

(The following proceedings were held in the presence and hearing of the jury panel.)

The Court: At this time on the Court's own motion, I will excuse for cause Mr. Robert E. Schuhmann. You may rise, and Mr. Herbert H. Hoech. Mr. Schuhmann and Mr. Hoech are excused for cause, and you may now leave.

Mr. Wilkey: May we approach the bench?

(Off the record discussion at the bench.)

The Court: Mr. Ernst is likewise excused.

Ladies and gentlemen, I have asked you all of the questions of the nature I have just asked, and I am going to ask that you further, for the general information of the attorneys on each side, I am going to ask that each of you, as I call your name, rise, state where you live, your address, and state the nature of your occupation. For instance, we have listings as salesmen. So that the attorneys may know more about the nature of your work, the title of your position, for the purpose of making preemptory challenges, if you are a salesman, state what kind of merchandise you sell and whether wholesale, retail, and so on. We have 67 jurors left, and I think we can run through this rather quickly.

Mr. Wilkey, would you desire to move to a more advantageous point?

Mr. Wilkey: No, Your Honor, I prefer to stay here. I believe I can see and hear the jurors very well.

The Court: When I call your name, rise and give your address and your occupation and the nature of your work.

(Thereupon as his name was called each juror stood and gave his address and his occupation.)

The Court: Ladies and gentlemen, that concludes the questioning on your qualification. It is now 12:25. I will now announce that—I will ask if there are any challenges for cause at this time?

Mr. Wilkey: No challenges for cause, Your Honor, but I would point out that Mr. Duke is a fireman, and under the statute he is exempt if he wished to claim it.

The Court: Mr. Duke, do you wish to claim an exemption?

Juror: No, sir.

Mr. Foreman: May it please the Court, one question. Mr. James Frank Hammond, I would like to know if he is related to the former United States Marshal, Frank Hammond?

Juror (Hammond): Yes, Your Honor. Nephew.

The Court: Very well.

I will ask that each side now indicate its peremptory challenges. The defense will have ten peremptory challenges. The Government will have six peremptory challenges.

I am going to excuse the jury panel until two o'clock, and you gentlemen may make your challenges during the noon recess.

I want to instruct you all before you are excused, and these instructions will be regarded by everyone, with par-

ticular attention to those who will eventually be selected as jurors to try this case:

You are instructed, and you are instructed now, that you will not discuss this case with anyone. You will not permit anyone to discuss it with you, and these instructions go to any other case that you may try either in this Court or in Judge Hannay's Court. If anyone attempts to discuss this case or any other case with you, you should ascertain who it is and report it to the Court, but even though you are unable to ascertain who it is, it should nevertheless be reported to the Court. You will not discuss this case or any other case with each other. You will not come to any conclusion regarding this case or any other case until you have heard all of the evidence and until you have heard the argument of counsel and the charge of the Court, when you will retire as jurors, if you should be selected as jurors, to consider your verdict. Not until then will you come to any conclusions regarding any case, and then of course your conclusions must be based upon competent evidence.

You are further instructed during your service as jurors, whether it be in this case or some other case, you should not carry on any conversations in the halls or elsewhere with anyone, with any witnesses, with any defendants, or with attorneys. Your conversations may be perfectly innocent, but those conversation sometimes result in mistrials, so I want to ask you while you are jurors to remain to yourselves.

With those instructions, the jury panel is excused until two o'clock, and at that time I will ask that you return

and take your seats where you are now seated. I want you to be seated in the same order, and the jury is now excused and I will ask that the attorneys and the defendants remain briefly.

(The jury panel was withdrawn and the following proceedings were held out of the presence and hearing of the jury.)

Will the record show the entire jury panel has withdrawn?

Is there anything further, gentlemen?

Mr. Foreman: May it please the Court, we respectfully call the Court's attention to the fact that inasmuch as there are divergent interests here, two corporate defendants, banks, to whom certain type jurors might well not be acceptable, there are racial backgrounds represented which are divergent, Mr. Parr and Mr. Donald Anglo-Saxon descent, the other defendants of Latin-American descent, having a divergence of interest, also two of the defendants only on the 20th count, Jesus Oliveira and O. P. Carrillo, we respectfully suggest to the Court that the statutory ten challenges authorized when there is one defendant, or, at any rate, ten, is inadequate. We have no objection to the Government having more challenges than its six if it so desires, but we think a minimum of 20 challenges, peremptory challenges, in view of the diverse interests of the clients—

The Court: That is 20 for the defendants and 12 for the Government?

Mr. Foreman: Yes, sir. I know the Court is entirely within its rights in whatever it rules, but we have enough to do it. We won't have to take a chance on being short.

The Court: What says the Government?

Mr. Wilkey: May we confer a moment, Your Honor?

The Court: You may, sir.

Mr. Foreman: Knowing that it is not binding—

The Court: We have 67 jurors now, do we not?

Mr. Foreman: That is what we did have before. I know that is not binding and not a precedent, that this Court's rules are just as binding and original as another District.

The Court: I will say that the Court is inclined to adopt that suggestion, particularly since there are a large number of defendants and since we have enough jurors to accommodate the suggestion.

Mr. Wilkey: Your Honor, we have no objection. We think that counsel is going to request that it should be made before the jurors are lined up in the order we will have to strike from.

The Court: I believe the suggestion is timely. You have the order. The order remains the same. The order is identical as they appear on the list.

Mr. Wilkey: The point being that defense counsel did not make that suggestion until he saw the order in which he would have to strike and varying from the order might have influenced him.

Mr. Foreman: I am willing to start at the bottom or in the middle.

The Court: I don't want any argument. I have announced the Court favors the suggestion. Is there objection?

Mr. Wilkey: No, Your Honor. We have no objection to it.

The Court: Very well. The Court accepts the suggestion. Owing to the fact that there are a large number of defendants and the defendants will be allowed 20 peremptory challenges, the Government will be allowed 12 peremptory challenges. The peremptory challenges allowed under the Rule in each case are doubled.

Anything further, gentlemen?

Mr. Wilkey: Your Honor, may I ask, if the jury be back at two o'clock, it is now 12:33, does Your Honor expect us to have those strikes at two o'clock?

The Court: I am going to make this suggestion. Mr. Anderson, I don't believe that you will have to re-seat the jurors when they return. There were told to return where they were sitting so they would be in the same order. I am going to suggest that each side be in the courtroom at ten minutes to two, that is at 1:50, that each side hand your list to the clerk at that time. He will be here. So that he may have his strikes indicated on his master list, at two o'clock we will be ready to call the jury.

Mr. Wilkey: Your Honor, in all honesty that means we won't be able to get a bit to eat before we start to trial.

The Court: Well, you will have an hour and 20 minutes. How much time are you going to require to eat or

to make your strikes? Do you want an hour to eat and 20 minutes to strike, or 20 minutes to eat and an hour to make your strikes?

Mr. Wilkey: I didn't want to be confined to a rigid schedule. What we are going to do is make our strikes and eat in what time we have left, but I am satisfied at 1:30 'til two we will have, at the best, completed work on our strikes.

The Court: I think that can be done, can't it?

Mr. Wilkey: I would like to have until 2:30, Your Honor. If we are through, we will be back here and ready and the jury will be here and ready. This is going to be a long trial of three to four weeks, and the people who decide it are going to be selected.

The Court: Are you going to require all the time from now to 2:30 to eat and make your strikes, or is that an absolute maximum time you will require? I have got 67 people standing by here, 67 jurors, I will say, and Judge Hannay is waiting until I discharge my jurors here before he can start in on a case and I don't want to delay the other Court and those other jurors any longer than I have to.

Mr. Wilkey: Your Honor, I think 30 extra minutes now might save us time in the long run. 2:30 is the maximum. We will be back here by then, before if we can, but Mr. Bottler and I feel we need more time to look these over and to get a bite to eat.

The Court: Do you want until 2:30 to hand your list to the Clerk, or 2:20 to hand your list to the Clerk?

Mr. Wilkey: Ten minutes doesn't matter.

The Court: I think ten minutes is pretty important out of an hour or an hour and a half.

Mr. Wilkey: We would like to have 2:30. If the Court please, the last time we struck when we had this number of strikes, we took considerable time on it and it wasn't too much even then.

The Court: If I gave you 24 hours, you could use that time.

Mr. Wilkey: We wouldn't actually on the selection of the jury, Judge. We are ready to begin this trial as soon as the jury is picked, but we would like some time to think about picking the jury. We don't want to make any mistakes at this stage.

The Court: Very well. I will ask you to—I am not going to ask you to hand your list in ahead of time, but I do want the list in the hands of the Clerk, in the courtroom, not later than 2:30, and Mr. Girard, when the jury returns, tell them they may stand at ease until 2:30, but I want them in the seat at 2:30.

Mr. Foreman: Your Honor, we would like to have them for a final check in their seats at 2:15.

The Court: Very well. I want them in their seats at 2:15. When you say a final check—

Mr. Foreman: I just mean to compare names. They will be seated in their order.

The Court: I do not intend to be in the courtroom at that time, and my instructions are that no one carry on any conversations with the jury.

Mr. Foreman: Will the Court ask that the bailiff ascertain they are in their order so we won't get the wrong names?

The Court: I will ask the Clerk and bailiff to be here, and my instructions are that counsel on either side will not carry on any conversations with the jury panel, that they not ask any questions of the jury, and if they want to ask such a question, what is the name of the juror, who is seated where, that the question be asked by the Clerk.

Mr. Foreman: If they are in order, we won't have to. We will know from our list.

The Court: I understood your suggestion was you would want to know if they were in order, and I don't think you will know until they ask their names.

Mr. Foreman: If he seats them, he will know it.

The Court: I will ask both Clerk and bailiff to be here, and if you want to ask—you can't listen to me if you are going to be carrying on conversations with other people—that if you want to ask any question of any juror, for instance, what is your name, that you ask the Clerk to ask that question and let the Clerk ask the question and let the Clerk give you the answer, and, sir, I ask you to put your feet on the floor.

Is there anything further?

(No response.)

Very well. Court is adjourned until 2:30.

The Court: Be seated, please. Have you gentlemen completed your pre-emptory challenges?

Mr. Foreman: Yes, Your Honor.

Mr. Wilkey: Not yet, Your Honor.

The Court: Well, how much more time will you require?

Mr. Wilkey: About five minutes, if the Court please.

The Court: Very well.

(Short interval.)

I am advised by the Clerk that he has indicated the pre-emptory challenges of both the Government and the defendants, and is ready to call the list of jurors who are to try this case, and I will ask if there is anything further before the Clerk calls this list?

Mr. Wilkey: Not from the Government.

Mr. Foreman: No, Your Honor.

The Court: Very well.

Ladies and gentlemen of the jury panel, the Clerk will call the names of those who are selected as jurors to try this case, and as your names are called, I will ask that you take your seats in the jury box, and I want to announce, I will suggest the ladies take seats in the front row as there is a rail you have to step over to get in the back row. So I want to suggest, if there are any ladies on this jury they reserve seats for them on the front row.

(The Clerk thereupon called the names of the first 12 jurors.)

The Court: You may all be seated, please.

Twelve jurors have now been empaneled. Under the provisions of Rule 24-C of the Federal Rules of Criminal Procedure, it is provided that the Court may direct that not more than four jurors, in addition to the regular jury, be called and empaneled to sit as alternate jurors. Alternate jurors, in the order in which their names are called, shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same function, powers, performance and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side shall be entitled to one pre-emptory challenge in addition to those otherwise allowed by law if there are two alternate jurors to be empaneled, and two peremptory challenges in addition to those otherwise allowed by law if there are to be four alternate jurors empaneled. The additional peremptory challenges may be used against an alternate juror only, and other peremptory challenges allowed by the Rules may not be used against an alternate juror. The Court will empanel four alternate jurors.

As two peremptory challenges are to be taken by each side, I will ask that the next eight on the list, the next eight against whom no peremptory challenge as up to now

have been taken, to stand. Is there any objection to the procedure as suggested, or is there any suggestion?

Hearing none, I will ask the Clerk to call the next eight names on the list who have not been challenged by either side, and I want counsel on both sides to—I am going to ask you eight persons to rise as the names are called, so if you want to observe them, you may. Will you call the next eight names on the list?

(The Clerk thereupon called the names of the next eight jurors unchallenged on the list.)

Gentlemen, each side will take your peremptory challenges from the eight jurors who are standing.

(Short interval.)

I will ask the Clerk to call the names of those not challenged.

(The Clerk thereupon called the names of the four alternate jurors unchallenged.)

Those of you who are not selected to try this case, I will ask that you now report to Judge Hannay's Court for further service. He is on this floor and down the hall. Thank you, ladies and gentlemen.

The 12 jurors in the box and the four alternate jurors will now rise and take the oath to try the case of the United States of America vs George B. Parr and others.

(The 16 jurors were thereupon sworn by the Clerk.)

The Court: I will ask that the indictment now be read aloud to the jury, the defendants, and the Court.

(Whereupon the indictment was read, to which all defendants plead not guilty.)

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The Court: Be seated, please.

I have one other question regarding jury qualifications. There is one juror listed as Cleveland, which is not in this District. Will the Juror Terry Turner please rise?

Mr. Turner, your address is listed as Cleveland. Do you live in Cleveland or live on a Cleveland route out of Cleveland?

Juror Turner: I live a little out of Cleveland.

The Court: Is that in Liberty County?

Juror Turner: Yes, sir.

The Court: Well, Liberty County is not in this District, so I am suggesting the procedure that the juror be discharged and be replaced by the first alternate juror, which under the Rule is proper. Rule 24-C of the Federal Rules of Criminal Procedure provides in part, alternate jurors, in the order in which they are called, shall replace jurors who, prior to the time the jury retires to consider

its verdict, become unable or disqualified to perform their duties, and if this man lives in Liberty County it is my opinion he is disqualified to perform his duty. What says counsel?

Mr. Wilkey: May it please the Court, may we ask that the jury be retired or approach the bench?

The Court: I suggest the jury be retired.

(The following proceedings were held out of the presence and hearing of the jury.)

The Court: I want to say that we have had similar situations arise a number of times in towns that are near county lines, as Cleveland is. Cleveland is near the San Jacinto County line, and San Jacinto is in this District and Division, but Cleveland itself is in Liberty County, which is in the Eastern District of Texas, and the Juror Terry Turner has answered that he lives in Cleveland proper, in Liberty County. I would be glad to hear counsel at this time.

Mr. Foreman: May it please the Court, it is the position of the defendants, since the juror in question was legally disqualified at the time he was empaneled in this case, that at this time we desire to move for a mistrial on these grounds, that it would be improper under the conditions to substitute one of the alternate jurors because the defendants have been arraigned, the jury sworn and empaneled with a disqualified juror, and each defendant moves at this time for a mistrial.

The Court: What says the Government?

Mr. Wilkey: Your Honor, we are under the impression that the Court's action was entirely correct here.

The Court: The Court has taken no action.

Mr. Wilkey: The Court suggested action in removing the juror discovered to be disqualified. We haven't had this point arise before. My first information is that the defendants' motion for mistrial is not well formed and that the provision of the alternate juror statute is to take care of this and other situations where a juror is unable to serve for any discoverable reason, but since it hasn't arisen before, we are confronted with a lengthy trial and I think we should have to brief this question before we can advise the Court, and I think that ought to be done.

The Court: I think it should be done, too. I will make this comment, which of course is not binding on the defendants at all. The defendants are not at fault in the respect in which I am about to comment.

Obviously the Juror Terry Turner did not properly respond to qualifying questions asked yesterday. I asked the Clerk to stand and read aloud, and he did stand and read aloud the names of all of the counties of the Houston Division, and I then propounded to the panel, "Do you reside in one of the counties just read by the Clerk? Is there anyone who would answer that question no?" and no one responded. Mr. Turner did not respond, so I would say that our difficulty arises from Mr. Turner's failure to respond to that question if he lives in Liberty County as he now says he does. I read in the paper this morning he was from Cleveland, Texas, and I now see on the list his

address is listed as Cleveland. And let me say that this situation has arisen several times before me, but on inquiry I have always been advised that, yes, I live on rural route so-and-so, out of X town, and I live over in blank county, but Mr. Turner's answers are that he lives in Cleveland, in Liberty County.

The language of the Rule says, "Alternate jurors in the order in which they are called shall replace jurors who prior to the time the jury retires to consider its verdict become unable or disqualified to perform their duties." I am still speaking. So there may be something to the motion of defendants that the man has not become disqualified. He was disqualified. Now, I would like to have it briefed, and there probably are some annotations on the subject. I don't want to proceed with this trial if we can't proceed properly, and the Court will take a recess. I think the burden is on the Government to sustain the position, and from the reading of the Rule, it appears that the motion is good. Because the Rule says to replace jurors who prior to the time the jury retires to consider its verdict become unable or disqualified. Under strict interpretation of the language, the man has not become disqualified. He was disqualified. This is an important and extensive trial, and I don't want to continue or conduct any mock trials, so I do want to allow time to brief the subject.

Do you have any idea how much time may be required, Mr. Wilkey?

Mr. Wilkey: I think at least an hour should be allowed, Your Honor, and, too, the Government wants to be right in this matter. We have no desire to go through another

expensive trial on unfirm ground. We must ascertain this to the complete satisfaction of the Court and ourselves. We will start with an hour, and we will advise the Court if it looks like it takes more than that.

The Court: I think there should be an answer, and I want the correct answer if there is proper precedent in this case. If it cannot be found in the annotations or other reference books available, I would like to have the answer found before we proceed in this case.

Mr. Wilkey: Is Your Honor reading from Rule 23 there?

The Court: 24-C.

Mr. Wilkey: All right, sir.

Mr. Sharpe: May it please the Court, I would like to further add this grounds to the motion for mistrial, since this matter has just been called to my attention.

I have consulted the list used for striking the jurors, and I find that Mr. Turner was listed as Juror No. 30 on the list, and we therefore want to add to the motion that since he should not have been listed at all, the fact that he was included there and that strikes of jurors were made both before and after his name, not only was the number of strikes used in selecting the regular jurors affected, but that also in turn affected the selection of the alternate jurors, and had his name not been included, we would have possessed at least one further name on the list, and we add that ground.

The Court: If his name had not been on the list, then I would think the next alternate, Clifford Guerrant, would have been on the jury. I am not ruling on this finally. I am making that comment.

Mr. Foreman: May it please the Court, I have nothing to say as a matter of law, but a matter of public information, the man's name on the list appears to be Cleveland, Texas. It was on the list as furnished by the Clerk on which to make our original examination. May I ask how he happened to get on this list?

The Court: I don't know. I assume his name was drawn out of the jury box. If it is not, I don't know how it got there. The Judge does not draw the jury.

Mr. Foreman: Out of the jury box by the marshal? Does the marshal have a jury list for this District?

The Court: The Clerk has it. The Clerk and the jury commission.

Mr. Foreman: All right. Perhaps the juror did live in the county or in the district at some time. That might have made him a qualified juror.

The Court: Again I cannot comment. If he did, I don't know how we had the address Cleveland, Texas. He may have at one time lived on a rural route out of Cleveland County or Montgomery County. Cleveland, as Mr. Foreman knows, is situated in a place where those counties come together, but it is in Liberty.

Mr. Foreman: I will say this to the Court, it didn't occur to me until the Court called it to my attention this morning, or I would have called it to the Court's attention.

Mr. Wilkey: I will say to the Court, as the defendant says, I was not familiar enough with the geography to know it was out of the District. I wasn't aware of the location of Cleveland.

Mr. Foreman: My county is on the other side Polk County. You have to go through Cleveland to get there.

The Court: As you know, if you take the road up to East Texas, the road going to Lufkin and Nacogdoches, you leave Montgomery County and you go into Liberty, and you pass through Cleveland, and a short distance beyond Cleveland you go back into San Jacinto County, and you are again in the Eastern District. There is a portion of that road both this side and immediately the other side of Cleveland which are in Liberty County.

Anything further, gentlemen?

Mr. Foreman: Nothing further.

The Court: I do want that question behind us before we proceed. The jury will be excused until eleven o'clock. Court will recess until eleven o'clock.

(Five minute recess.)

Mr. Wilkey: I have a map here.

The Court: The Court has judicial knowledge and the Court actually knows these things, and I don't think I need a map.

Mr. Wilkey: I have one here.

The Court: If you want to correct the Court on anything, I won't need the map, but if you do I will look at it. I doubt if Mr. Foreman needs to refer to a map in that area.

Mr. Foreman: No, Your Honor, I have ranged over it.

The Court: I observe that some of the defendants are not present. Do you believe their presence is necessary for this discussion on a question of law?

Mr. Foreman: Not from our standpoint. I shall make no point of it.

The Court: What says the Government?

Mr. Wilkey: I don't think so, Your Honor. It is a question of law here.

The Court: Very well. I understand that the Government has a suggestion.

Mr. Bottler: Your Honor, we believe that in view of the remarks made by the juror, it would be well to find out exactly where he does live.

The Court: And you want to interrogate him?

Mr. Bottler: Yes, Your Honor.

The Court: Very well. I think if that is to be done, all defendants should be present.

Mr. Foreman: They are scattered, Your Honor, but we will keep trying. They are looking for them now.

Mr. Wilkey: Your Honor, we don't want to interrogate him. We think that would be improper for either side. We would ask that the Court interrogate him.

The Court: What do you want the Court to ask him?

Mr. Wilkey: All questions concerning the exact location.

The Court: Precisely where he lives and how long he has lived there?

Mr. Wilkey: Geographically what he considers his residence, and if he has any other places he might consider his

residence, to inquire as to those also so we can see where in law his residence is.

The Court: Very well. I believe all defendants should be present.

Mr. Foreman: You mean by that, I guess, his business residence, where he works as distinguished from his domicile?

The Court: I will conduct what I consider a thorough interrogation on the subject, and I will ask if either side has any further questions they wish to suggest be asked of the Juror Terry Turner.

Who has gone to look for the other defendants?

Mr. Foreman: Mr. Garza, Your Honor.

The Court: Does he know where to look?

Mr. Foreman: I am not sure that he does because about three or four had already gone downstairs.

The Court: Do Mr. Carrillo or any of the other gentlemen have a better idea?

Mr. Carrillo: We might get them and might not get them.

The Court: He knows his presence is required. The others do not know their presence is required. For the record, we will leave the Parr trial.

* * *

(The following proceedings were held in the presence and hearing of the jury.)

The Court: Before we proceed, we want to be certain that we have all of the facts, and Mr. Terry Turner, I have some further questions I want to ask of you. Will you please rise?

We want to know definitely where you reside. Do you reside in the town of Cleveland?

Juror Turner: I live in Cleveland but I work in Fostoria.

The Court: How long have you lived in Cleveland?

Juror Turner: I have been living in Cleveland three years. I have been living in and around Cleveland for the last 43 years.

The Court: You say you have lived in Cleveland three years. Have you lived in the same house for the last three years?

Juror Turner: The last three years until this last week.

The Court: Now what happened a week ago?

Juror Turner: What?

The Court: What happened a week ago?

Juror Turner: I moved three and a half miles southeast of Cleveland.

The Court: You all live three and a half miles southeast of Cleveland?

Juror Turner: Yes.

The Court: In what county do you now reside?

Juror Turner: Well, I live in Liberty County now.

The Court: You say you moved last week?

Juror Turner: Yes, sir.

The Court: All right. Let's go back to the time you moved. On what day did you move?

Juror Turner: What day?

The Court: Yes, sir.

Juror Turner: I moved last Wednesday, Thursday, Friday, Saturday and Sunday.

The Court: You started moving on Wednesday?

Juror Turner: Yes, sir.

The Court: All right. You started moving on March 6?

Juror Turner: Yes, sir.

The Court: 1957. Now, prior to March 6, where did you live?

Juror Turner: Prior? I lived in Cleveland.

The Court: And in what county did you live?

Juror Turner: Liberty County.

The Court: Yes, sir, and you lived there three years?

Juror Turner: Yes, sir. Three years in the city limits of Cleveland.

The Court: And you are a married man and you live in a house in Cleveland, in Liberty County, with your family?

Juror Turner: Yes, sir.

The Court: But you work at a sawmill in Fostoria?

Juror Turner: Which is in Montgomery County.

The Court: Well, are you gentlemen satisfied with the inquiry and the facts, the residence of this juror?

Mr. Foreman: We are, yes.

Mr. Wilkey: Yes, Your Honor.

The Court: Very well. The jury may again withdraw, and you will stand at ease until 11:15, and at that time will you be back in the jury room at 11:15.

(The following proceedings were held out of the presence and hearing of the jury.)

The Court: Gentlemen, it seems clear to me for the last three years the juror in question has resided in Liberty County, so we now have the facts straight and I want to know—I am of the opinion that he is a disqualified juror and I think the only question now before the Court is a question of law as to whether a mistrial should be declared and the jury discharged, or whether the Juror Terry Turner may be discharged and replaced by the first alternate juror, so the Court will recess until 11:15 and I want counsel to further advise the Court as to the law.

(Short recess.)

The Court: Be seated, please.

Well, what can you gentlemen tell me now on the motion for mistrial because of a disqualified juror?

Mr. Wilkey: Do you wish to hear from the Government first?

The Court: Yes, sir.

Mr. Wilkey: Your Honor, we have examined the rules and all applicable law on it. There is a dearth of interpretation of the law but it is our opinion that the motion should be granted. The motion as made by the defendants should be granted. We find only one case which directly bears upon the point. It, by implication, although it is not wholly—

The Court: I agree that there is a dearth of authority, and I will not argue with the lawyers when they are in agreement, so I think the motion for mistrial is granted, and send for the jury please.

Mr. Wilkey: Your Honor, we further ask that the Court direct the Clerk to summon another jury panel for this following Monday morning, the 18th of March, and to take up this case again at that time. All counsel are prepared.

The Court: I will consider that after we discharge this jury.

Mr. Foreman: We would like to be heard on that, Your Honor.

The Court: You will be heard.

(The following proceedings were held in the presence aud hearing of the jury.)

The Court: Ladies and gentlemen of the jury, a motion has been made for mistrial because we have empaneled a

disqualified juror who does not reside in this District. The facts are that the juror resides in Liberty County, which is in the Eastern District of Texas. For the benefit of the jury, who I understand to be the public, you are entitled to know why we empaneled alternate jurors and then do not use them.

Under the Rule proving for alternate jurors, it says, "Alternate jurors in the order in which they are called shall replace jurors who prior to the time the jury retires to consider its verdict become unable to disqualified to perform their duties." If a juror had become, b-e-c-o-m-e, unable or disqualified, then that juror would be replaced with an alternate, but in this situation the juror did not become disqualified. He was disqualified from the beginning. He was disqualified before he took his place in the jury box, and I will say if the jury panel, and particularly the Juror Terry Turner, had given attention to the questions asked and had answered them correctly, this would have been avoided, so a mistrial is declared.

A mistrial is declared and the Juror Terry Turner is finally discharged. You are excused, Mr. Turner. You may leave now. We may have further use for the remaining jurors in other cases. I am going to have to give some consideration to whether we will try other cases this week. I believe we will.

The remaining 15 jurors are excused until 9:30 tomorrow morning, at which time you will report back to this Court for further service. You are excused until 9:30 tomorrow morning.

484 MOTION TO DISMISS CERTAIN COUNTS OF THE INDICTMENT PLEAS OF RES JUDICATA, DOUBLE JEOPARDY, ETC.

(Caption Omitted)

(Filed, March 18, 1957)

To Said Honorable Court:

Section 1

The Defendants O. P. Carrillo and Jesus Oliveira file this, their motion for dismissal of the Twentieth Count of the indictment and their plea of res adjudicata and of double jeopardy in regard to said Twentieth Count, and respectfully show the following:

On the first trial of this case, which was begun on November 7, 1956, and which ended on December 18, 1956, these said defendants were acquitted and found not guilty on each of the first nineteen counts of the indictment. They each, therefore, cannot be again tried for the same offenses without being exposed to double jeopardy in connection with same; and they each contend that every overt act and fact issue included within the first nineteen counts of the indictment have been established favorably to them, and each of them, and that such issues cannot now be relitigated as between the Government and these defendants and the other defnedants herein.

These defendants particularly say that the verdict of the jury acquitting them on the first nineteen counts of the indictment found that they, and each of them, had

not devised or intended to devise a scheme and artifice to defraud the BISD, etc., which allegations contained in the first count of the indictment, and adopted in the subsequent eighteen counts thereof, actually charged conspiracy. These defendants say that if they did not actually devise a scheme and artifice to defraud, and did not intend to do so, then such findings of the jury are conclusive on the Twentieth Count of the indictment, which alleges that they conspired and agreed to commit the offenses set out in the first count of the indictment. These defendants say that if they are arraigned and tried on the Twentieth Count of the indictment, and if the Government is allowed to offer evidence in connection with any of the fact issues raised in the first nineteen counts of the indictment, that they each will be subjected to double jeopardy; and, in addition, that this will allow the Government to relitigate issues in this trial of the case that have heretofore in the first trial been found favorably to these defendants and against the Government. Particularly in connection with their plea of res adjudicata, these defendants say that Paragraph No. 1 under the title "Overt Acts" in the Twentieth Count of the indictment, specifically adopts each of the overt acts set out in Counts 1 through 19 of the indictment; that since each of said alleged overt acts have been found favorably to these defendants, the same cannot be inquired into or be passed upon by the Court and jury in the instant case, and as a matter of law could not be established as overt acts done for the purpose of carrying out the conspiracy alleged in the Twentieth Count of the indictment.

With reference to Overt Acts 2, 3, 4, 5 and 6 of the Twentieth Count of the indictment, these defendants show

that such fact issues were placed in issue on the first trial of this case and were determined favorably to them by the verdict of the jury. In particular, Count Number One of the indictment, on which each of these defendants was acquitted, alleges the following:

> "16. It was further a part of said scheme and artifice to defraud and to obtain money and property by false pretenses and representations that the defendants would
>
> * * *
>
> "(d) mail through the United States Mails tax statements, tax receipts and correspondence concerning taxes to taxpayers of the BISD and the receipt through the United States Mails of tax renditions, correspondence concerning taxes and checks in payment of taxes from taxpayers of the BISD,
>
> * * *
>
> "(r) use the United States Mails in transmitting the Annual Reports (referred to in (q) above) to the State Commissioner of Education, Austin, Texas, for filing with the Texas Education Agency (Central Education Agency),"

The acquittal upon these fact issues contained in the first count of the indictment effectively precludes their relitigation in connection with the Twentieth Count, or conspiracy count, of the indictment against these defendants. The favorable findings to these defendants, made on such issues, effectively established that they, and each

of them, had no connection whatsoever with the use of the mails, alleged in the first count of the indictment and which is adopted by reference in the Twentieth Count of the indictment. Their plea of res adjudicata in this respect should be sustained and the Government should be prevented from reading the indictment as against these defendants and from arraigning them in connection with Paragraphs 1, 2, 3, 4, 5 and 6 under the heading "Overt Acts" in the Twentieth Count of the indictment.

With reference to Paragraphs 7, 8, 9, 10, 11 and 12 of the Twentieth Count of the indictment, under the heading "Overt Acts", each of said allegations shows that the acts included therein took place at Benavides, Texas, which is within the Corpus Christi Division of the United States District Court for the Southern District of Texas, and therefore venue in regard to same would not be in the Houston Division of this Court. Furthermore, evidence was offered at the first trial of this case with reference to each of said Paragraphs 7 through 12, of the Twentieth Count of the indictment, and, as above stated, these defendants were acquitted on the first nineteen counts of the indictment, which necessarily found said issues in favor of these defendants, and the Government should not be allowed to relitigate the same on the subsequent trial of this case.

These defendants further show that on the first trial of this case, the evidence of the Government, and all of the evidence offered in the case, conclusively established that there was no act on the part of any defendant in con-

nection with devising or intending to devise a scheme to defraud or by way of agreement or conspiracy committed within the Houston Division of the United States District Court for the Southern District of Texas. Accordingly, venue of the Twentieth Count of the indictment was not established by any agreement or conspiracy within the Houston Division of this Court, and the Government in the first trial of this case and in the subsequent trial herein must depend upon a showing that one or more of the overt acts not previously litigated and decided in this case took place within the Houston Division of this District. These defendants say that because of the above and foregoing, the Government has not shown, and cannot show, an agreement or conspiracy within the Houston Division of this District, and that the Government further cannot show the commission of any overt act within said Houston Division, and in the event it should be held that some of the overt acts set out in the Twentieth Count of the indictment have not been heretofore litigated and decided in favor of these defendants, then as to any of such acts, the indictment shows on its face that venue would not lie in the Houston Division of this District.

In any event, these defendants object and except to their arraignment on the Twentieth Count of the indictment, and move to dismiss the same because they, in effect, are and will be subjected to double jeopardy on the trial of said Twentieth Count, and, furthermore, every issue contained in the said Twentieth Count and the overt acts alleged thereunder have been adjudicated favorably to these defendants. Alternatively, these defendants show that in the event Overt Acts 7 through 12 have not been so ad-

judicated, this Court would not have venue of the same in the Houston Division thereof if they constituted the only overt acts alleged under the Twentieth Count of the indictment, and in any event because of the said double jeopardy, res adjudicata and lack of venue, said Count should be dismissed as to these defendants.

These defendants move to dismiss the Twentieth Count of the indictment, and alternatively object to their arraignment on the same because of the said double jeopardy, res adjudicata and lack of venue. These defendants further show that unless these pleas are sustained, the other and remaining defendants in the case will also be prejudiced thereby.

489 SECTION II.

The Defendants Santiago Garcia and San Diego State Bank file this, their motion for dismissal of the Twentieth or conspiracy Count of the indictment, as well as the following counts as to each of said defendants: As to the defendant Santiago Garcia, Counts 4, 5, 8, 13, 14, 15, 17, 18, 19 and 20; as to the defendant San Diego State Bank, Counts 1, 2, 3, 7, 10, 11, 12, 16 and 20; and their plea of res adjudicata and of double jeopardy in regard to said counts, and respectfully show the following:

As to the Twentieth Count of the indictment, these defendants adopt each and all of the allegations set out in Section I of this pleading hereinabove made on behalf of the defendants O. P. Carrillo and Jesus Oliveira. The record herein shows that the Defendant Santiago Garcia was ac-

quitted on ten counts of the indictment not hereinabove enumerated (being Counts 1, 2, 3, 6, 7, 9, 10, 11, 12 and 16), and particularly on the first count of the indictment which is referred to and adopted in the Twentieth Count of the indictment. The defendant San Diego State Bank respectfully shows that it was acquitted on eleven counts not hereinabove enumerated (being Counts 4, 5, 6, 8, 9, 13, 14, 15, 17, 18 and 19), and that in each of said counts the first paragraph thereof specifically adopted and re-alleged the allegations of the first count of the indictment, except those contained in the last or seventeenth paragraph thereof, which related only to the taking of a letter allegedly from a post office in the Houston Division of this District on September 29, 1952.

Each of the said defendants Santiago Garcia and San Diego State Bank respectfully shows that they have been acquitted of each of the overt acts mentioned in the first count of the indictment because of the above mentioned verdict of the jury, except that the San Diego State Bank was not thereby acquitted of the act mentioned in Paragraph 17 of Count One of the indictment by the verdict of the jury. However, said defendant San Diego State Bank respectfully shows that it was effectively acquitted of the acts mentioned in Paragraph 16, Subdivisions (d) and (r) of the indictment, as herein set out in Section I, and therefore such findings effectively preclude the relitigation of said issues in connection with the subsequent trial of this case.

Both of the said defendants mentioned in this Section, that is, Santiago Garcia and San Diego State Bank, re-

spectfully show to the Court that their plea of res adjudicata and double jeopardy should be sustained as to the Twentieth Count, as to each of them, and as to the following counts of the indictment as to each defendant: Santiago Garcia, Counts 4, 5, 8, 13, 14, 15, 17, 18, 19, and 20; as to San Diego State Bank, Counts 1, 2, 3, 7, 10, 11, 12, 16, and 20. Said defendants particularly say that they should be so acquitted on said counts because the jury in reaching its verdict on the remaining Counts found that there was no scheme and artifice to defraud devised by these defendants, nor did said defendants intend to devise said scheme and artifice to defraud as is alleged in Count One of the indictment and adopted in the subsequent counts numbered Two through Nineteen.

These defendants therefore move to dismiss the counts last hereinabove enumerated as to each of them, and, alternatively, object to their arraignment on the same because of the said double jeopardy, res adjudicata, and lack of venue. These defendants further show that unless the pleas herein contained are sustained, the other and remaining defendants in the case will also be prejudiced thereby.

491 SECTION III.

WHEREFORE, PREMISES CONSIDERED, the defendants O. P. Carrillo, Jesus Oliveira, Santiago Garcia, and San Diego State Bank pray that the Court sustain this motion to dismiss the Twentieth Count of the indictment as to all defendants; and as to the defendant Santiago Garcia, the following Counts: Nos. 4, 5, 8, 13, 14, 15, 17, 18, 19, and 20; and as to the defendant San Diego

State Bank, the following Counts: 1, 2, 3, 7, 10, 11, 12, 16, and 20; that the Government be prohibited from arraigning these defendants on said counts; and that the Government be prohibited from relitigating any of the issues heretofore found favorably to each of said defendants in connection with the counts on which they were acquitted by the verdict of the jury on the first trial of this case; and that the pleas of double jeopardy and res adjudicata made herein by each of the above named defendants be sustained.

O. P. CARRILLO
JESUS OLIVEIRA
SANTIAGO GARCIA
SAN DIEGO STATE BANK,
of Defendants.
By PERCY FOREMAN
Percy Foreman

T. GILBERT SHARPE
T. Gilbert Sharpe
Their Attorneys

Percy Foreman
1116 Capitol Avenue
Houston 2, Texas.

T. Gilbert Sharpe
P. O. Box 408
Brownsville, Texas.

492 JUDGMENT OF NOT GUILTY ON VERDICT OF JURY ON A PORTION OF COUNTS AS TO DEFENDANTS SANTIAGO GARCIA, JESUS OLIVEIRA, O. P. CARRILLO, AND SAN DIEGO STATE BANK, SAN DIEGO, TEXAS

(Caption Omitted)

(filed, March 18, 1957)

(Defendants' Exhibit No. 235)

On the 18th day of December, 1956, came the attorneys for the Government; and the defendants, Santiago Garcia, Jesus Oliveira, and O. P. Carrillo, appeared in person and by counsel, and the defendant, San Diego State Bank, San Diego, Texas, appeared by counsel; and the trial of this case, which was begun on November 7, 1956, and continued on November 8, 9, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 26, 27, 28, and December 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, and 17, was resumed before the Court and Jury.

The Jury, having been duly empaneled as required by law, after having heard the evidence and argument of counsel and received the charge of the Court, retired to consider their verdict on December 11, 1956, and on December 18, 1956, returned into open court a verdict of not guilty on the following numbered counts as to the defendants named:

Santiago Garcia: Counts 1, 2, 3, 6, 7, 9, 10, 11, 12, and 16.

Jesus Oliveira: Counts 1 through 19.

O. P. Carrillo: Counts 1 through 19.

San Diego State
Bank, San Diego,
Texas: Counts 4, 5, 6, 8, 9, 13, 14, 15, 17, 18, and 19.

No verdict was returned on the following numbered counts as to the defendants named:

Santiago Garcia: Counts 4, 5, 8, 13, 14, 15, 17, 18, 19, and 20.

Jesus Oliveira: Count 20.

O. P. Carrillo: Count 20.

San Diego State
Bank, San Diego,
Texas: Counts 1, 2, 3, 7, 10, 11, 12, 16, and 20.

IT IS THEREFORE, ADJUDGED that the defendant, SANTIAGO GARCIA, is not guilty of using the mails to defraud, in violation of Title 18, U. S. Code, Section 1341, as charged in Counts 1, 2, 3, 6, 7, 9, 10, 11, 12, and 16 in the Indictment and as found by the Jury; and there is a mistrial on Counts 4, 5, 8, 13, 14, 15, 17, 18, 19, and 20 as to said defendant.

IT IS FURTHER ADJUDGED that the defendant, JESUS OLIVEIRA, is not guilty of using the mails to defraud, in violation of Title 18, U. S. Code, Section 1341, as charged in Counts 1 through 19 in the Indictment and as found by the Jury; and there is a mistrial on Count 20 as to said defendant.

IT IS FURTHER ADJUDGED that the defendant, O. P. CARRILLO, is not guilty of using the mails to defraud, in violation of Title 18, U. S. Code, Section 1341, as charged in Counts 1 through 19 in the Indictment and as found by the Jury; and there is a mistrial on Count 20 as to said defendant.

IT IS FURTHER ADJUDGED that the defendant, SAN DIEGO STATE BANK, SAN DIEGO, TEXAS, is not guilty of using the mails to defraud, in violation of Title 18, U. S. Code, Section 1341, as charged in Counts 4, 5, 6, 8, 9, 13, 14, 15, 17, 18, and 19 in the Indictment and as found by the Jury; and there is a mistrial on Counts 1, 2, 3, 7, 10, 11, 12, 16, and 20 as to said defendant.

DONE at Houston, Texas this 18th day of March, 1957.

ALLEN B. HANNAY
United States District Judge

APPROVED:

Malcolm R. Wilkey
U. S. Attorney

T. Gilbert Sharpe
Atty. for Defendants

True Copy I Certify
Attest:
V. Bailey Thomas, Clerk
By Juanita Pool,
Deputy Clerk
(Seal)

495 REPORTER'S TRANSCRIPT OF PROCEEDINGS ON VOIR DIRE EXAMINATION OF JURORS, HELD ON MARCH 18, 1957

495 MORNING SESSION—MARCH 18, 1957

The Court: Ladies and gentlemen, the first order of business this morning will be the qualification of the jury panel.

The Clerk reports that we have an unusually large number of absentees this morning, and I want to give those names to the Marshal. Will you take these please?

The Clerk: I will give him a copy of the list, sir.

The Court: As I read these names, the absentees, if there are any of you who are now present I want you to speak up, please. I am calling the names as they appear on the list. No. 3. Edward S. Blount; No. 7, Lew Harris; No. 15, James B. Thompson; No. 20, W. B. Taylor; No. 23, W. H. Carter, Jr.; No. 47, Mrs. C. A. Bivin; No. 50, George T. Bantz; No. 57, Ray A. Blanton; No. 67, Frank Thomas; No. 68, Daniel J. Kury; No. 69, Robert G. Selman; No. 74, Ed Goodman; No. 76, S. M. Stanley; No. 81, Billie J. Arrington; No. 83, D. S. Grogan; No. 84, Herman Dietz.

(No response.)

The Marshal is instructed to locate these people and bring them before the Court so that we may ascertain why they are absent.

According to my information, that leaves 63 jurors who are present.

Ladies and gentlemen, I will now propound to you a number of questions which will bear upon your qualifications to serve as jurors in this Court. Before propounding the questions I will ask that you now rise and be sworn to give true answers to questions.

(Whereupon the oath was administered by the Clerk of the Court.)

You may be seated.

As stated earlier, I will now propound to you a number of questions which will bear upon your qualifications to serve as jurors in this Court. You have been sworn to give true answers, and I want to state that failure to speak up when you should speak up is construed an answer. I also want to state that there are 63 of you, that these questions are directed to each of you individually, and I want each of you to consider that the question was asked directly of you.

Are you a citizen of the United States and of the State of Texas? Is there anyone who would answer that question no?

(No response.)

The next question I will ask is, are you a citizen and resident of one of the counties of the Houston Division of the Southern Judicial District of Texas, but before propounding that question, so that you may correctly answer it, I will explain that there are 12 counties in the Houston Division. I will now ask the Clerk to stand and read aloud the names of the 12 counties so you may correctly answer these questions.

The Clerk: Those counties are: Brazos, Colorado, Fayette, Grimes, Harris, Madison, Montgomery, Polk, San Jacinto, Trinity, Walker and Waller.

The Court: I will now ask you if you are a citizen and resident of one of the counties of the Houston Division just read to you. Is there anyone who would answer that question no?

Obviously the answer—

What is your name?

Venirman: Walter Dahl.

The Court: I want to locate your name first.

The Clerk: No. 85.

The Court: Walter Dahl?

Venirman: Yes, sir. I am working up in Anderson County right now.

The Court: Where do you reside?

Venirman: Well, in Polk County.

The Court: Does your family live in Polk County?

Venirman: No, sir.

The Court: Where do they reside?

Venirman: They are in Anderson County.

The Court: I want to fully understand your situation. How long have you been working in Anderson County?

Venirman: Since September, I believe it was.

The Court: Since September?

Venirman: Yes.

The Court: Did you move your family there?

Venirman: Yes, sir. We have a place in Polk County, but we live in Anderson.

The Court: If you have moved your family to Anderson County, I would think that that would be your residence. What is the opinion of counsel?

Mr. Wilkey: I believe Your Honor is correct on that.

Mr. Foreman: Yes, Your Honor.

The Court: Very well. Mr. Dahl, you are excused for lack of qualification, and I will say to you now and all others who may be excused that your check for reporting here today and for mileage, if mileage is due, will be mailed to you. You are excused, Mr. Dahl. No. 85, Mr. Walter Dahl, has been excused.

Are you a qualified voter in one of the counties of the Houston Division of the Southern Judicial District of Texas?

Now, before answering that question, I want to explain that failure to pay a poll tax or obtain an exemption certificate does not disqualify you to serve as petit jurors in this court. Qualifications of a voter are that you must be at least 21 years of age, that you must have resided in the State for more than 12 months and must have resided in the county of your residence for more than six months. If you qualify under those tests, then you are a qualified voter. I will say again that failure to pay a poll tax or obtain an exemption certificate does not disqualify you to serve as jurors. I will now ask, bearing in mind those quali-

fications, are you a qualified voter in one of the counties of the Houston Division? Is there anyone who would answer that question no?

(No response.)

Very well. Are you a freeholder within the State of Texas or a householder within one of the counties of the Houston Division? Before calling on you to answer that question, I want to explain to you what is meant by freeholder and householder. If you own land or an interest in land any place in the State of Texas, then you qualify as a freeholder. If you are the head of a family, and by head of a family I mean if you are married, and since women are now qualified as jurors, this Court does not attempt to decide which one is the head of the family. If you are married and rent a home in which the family lives, whether it be a house, apartment, or a room, or if you are a widow or widower with children, you likewise are the head of a family, and if you rent and provide a home for them, you are a householder, so bearing in mind those explanations, I will now ask, are you a freeholder within the State of Texas or a householder within one of the counties of the Houston Division? Is there anyone who would answer that question no? Anyone who would answer that question no, will you please rise, or if you have any serious doubts you will please rise. I see two gentlemen and one lady standing.

The lady? No. 19. What is your situation?

Venirman: I am Mrs. Virginia Yates. I live with my father and he pays the rent. That is what I didn't know. I don't own a home.

The Court: First, do you own land or an interest in land any place within the State of Texas?

Venirman: No, I do not.

The Court: And are you married?

Venirman: No, I am not.

The Court: Do you have children?

Venirman: No.

The Court: And you live in the home of your father?

Venirman: That is right.

The Court: Very well. It is my opinion, Mrs. Yates, you are not qualified.

And this lady?

Venirman: Mrs. Clara E. Corder, and I am a pastor's wife and we live in a pastoral in Conroe.

The Court: Is your husband living?

Venirman: Yes, he is out in the halls here today.

The Court: You and your husband live together in that house?

Venirman: Yes, sir.

The Court: It is my opinion that you are qualified as householders, and you live in Conroe?

Venirman: Yes, sir.

The Court: It is my opinion that you qualify as householders in Montgomery County. Does anyone have a contrary opinion?

Mr. Foreman: No, Your Honor.

Mr. Wilkey: No, sir.

The Court: Very well. You are qualified.

The gentleman?

Venirman: Sir, I am not married and I don't own any property.

The Court: Your name, please?

Venirman: C. D. Holzinger.

The Court: Do you own land or an interest in land any place in the State of Texas?

Venirman: No, sir.

The Court: You are not married?

Venirman: No, sir.

The Court: Have you ever been married?

Venirman: Yes, sir.

The Court: Do you have children?

Venirman: No, sir.

The Court: And you live in rented quarters?

Venirman: Yes, sir.

The Court: Very well. It is my opinion that Mr. Holzinger is not qualified. Is there anyone with a contrary opinion?

(No response.)

You are excused, Mr. Holzinger. I see one other gentleman standing. Is there anyone else who is going to stand?

What is your name?

Venirman: A. C. Gilbert.

The Court: All right, sir.

Venirman: I am not married, I have been married and I live in rented property here.

The Court: Do you own, sir, land or an interest of land any place in the State of Texas?

Venirman: No, I don't.

The Court: You are not now married?

Venirman: No.

The Court: And do you have children?

Venirman: Yes.

The Court: Do you provide a home for yourself and children?

Venirman: Well, I provide a home for my children part time here, but most of the time in Oklahoma. He goes to school in Oklahoma nine months out of the year.

The Court: When they are not in school here, do they live with you?

Venirman: With me.

The Court: Here in Houston?

Venirman: Yes.

The Court: It is my opinion, Mr. Gilbert is qualified under these facts. Does anyone have a contrary opinion?

(No response.)

Very well. You are qualified, Mr. Gilbert.

Are you able to speak, read, write and understand the English language? Is there anyone who would answer that question no? I see one gentleman standing.

Your name, please?

Venirman: James White.

The Court: James White?

Venirman: Yes, sir.

The Court: What is your situation?

Venirman: I can't read.

The Court: Very well, sir. It is the Court's opinion you are not qualified and you are excused.

Have you served as a juror in this Court at any time within the past 12 months? Is there anyone who would answer that question yes? If so, please rise.

What is your name?

Venirman: Richard Barnett.

The Court: Richard S. Barnett?

Venirman: Yes, sir.

The Court: What is your situation, sir?

Venirman: I was in Harris County Civil Court last October.

The Court: Have you served in the United States District Court any time within the last 12 months?

Venirman: No, sir, it was Harris County.

The Court: Very well. You are qualified.

The next question, have you ever been convicted of a felony from which you have not received a full pardon? So that each of you may properly answer this question, I will explain to you what a felony is. A felony is what is considered to be the greater degree of crime. We have felonies which are the greater degree of crimes, and misdemeanors which are the lesser degree of crime. The test is if you have been convicted of a crime or offense for which the authorized maximum penalty would include imprisonment for more than one year, then that is a felony. It may include imprisonment or a fine upon conviction of a felony. One may be fined only or one may be imprisoned for less than a year, but the test is if the authorized maximum penalty is more than a one year, then that is a felony. Bearing in mind that explanation, I will ask, have you ever been convicted of a felony from which you have not received a full pardon? Is there anyone who would answer that question yes?

Very well. What is your name, please?

Venirman: George W. Kemp.

The Court: Have you been convicted of a felony?

Venirman: I have.

The Court: Have you received a pardon?

Venirman: A pardon?

The Court: Pardon.

Venirman: I have—

The Court: From the Governor of the State or from the President of the United States?

Venirman: But not of the State of Texas. It was in the State of Oklahoma.

The Court: Were you convicted in Oklahoma?

Venirman: Yes.

The Court: Did you receive a pardon from the Governor of Oklahoma?

Venirman: A sentence of two years in the State penitentiary.

The Court: Have you received a pardon? Do you understand what I mean by a pardon?

Venirman: A pardon?

The Court: Pardon. P-a-r-d-o-n.

Venirman: I received two years from the—

The Court: I think under the circumstances Mr. Kemp is not qualified, and you are excused.

Are you now under indictment or other legal accusation?

What is your name?

Venirman: Edwin F. Skarpa.

The Court: Edwin F. Skarpa. What is your situation?

Venirman: I received a three-year suspended sentence in 1945.

The Court: Have you received a pardon?

Venirman: Well, I don't know.

The Court: Was that in the State Court or the Federal Court?

Venirman: Here in Harris County.

The Court: Have you received a pardon from the Governor?

Venirman: I ain't heard nothing about it.

The Court: Very well. It is my opinion you are not qualified, so you are excused.

What question are you answering?

Venirman: The same one you was on, Judge.

The Court: What is your situation? First, your name?

Venirman: G. E. Busby. In 1939, I was convicted of a felony, served two years, was paroled, and I never have received no full pardon.

The Court: Very well. It is my opinion you are not qualified, and you are excused.

I now ask, are you under indictment or other legal accusation for theft or any felony? Is there anyone who would answer that question yes?

(No response.)

Obviously none of you did.

Ladies and gentlemen, from your answers, it appears you are qualified as jurors in this Court. I will ask now if there are any of you who have any excuses to present why you should not serve as jurors, and before you answer that, I want to say that an excuse for business reasons or reasons of employment will not be recognized. I will ask now if you have any excuses to present why you should not serve, and if so will you please rise?

What is your name?

Venirman: John N. Gilbert.

The Court: What is your reason?

Venirman: I think I am more or less acquainted with the defendant's activities.

The Court: With who?

Venirman: I am more or less acquainted with—in fact I am acquainted with the defendant's activities.

The Court: What defendants?

Venirman: I am referring to Mr. Parr. Is this the Parr case?

The Court: I am not at this time qualifying jurors to try any particular case. I am simply inquiring into your qualifications to serve generally as jurors, so when we do reach the point of selecting the jury to try a particular case, we will then qualify you on those matters. Very well. You may be seated.

Your name, sir?

Venirman: Walter E. Blizzard.

The Court: Your reason or excuse?

Venirman: I have a case of paralysis in my home, and it is necessary I do considerable lifting and fixing of braces, and pushing of a wheel chair, and so forth and so on. If the case or cases we are involved in are not long and drawn out—

The Court: You say a case of paralysis at home? Are you the one?

Venirman: No, sir, it is my daughter.

The Court: Well, sir, I think I will have to disallow that. If you were suffering, we would have to excuse you.

Venirman: No, sir, I am not.

The Court: We get into situations where many people for one reason or another have someone who needs help. You may be seated.

Your name, sir?

Venirman: Max Joachim.

The Court: Your reason, sir?

Venirman: I have my wife in the hospital, Sunday morning, pretty sick.

The Court: She is in the hospital now?

Venirman: Yes, sir.

The Court: Well, I think I have to treat that as I did the other gentleman. If she is in the hospital, we know you are anxious for her, but we know she is getting good care and so I cannot recognize that.

The next gentleman?

Venirman: Milton E. Dye. My wife is in the hospital with a baby born last night, and I have three small children at home with no one to take care of them. I have a note from the doctor.

The Court: Under those circumstances, I think I should recognize that one. The law will excuse a mother with children under 16, and in this situation the mother is incapacitated, you have children under 16, and I think I

am required to extend that to the father as well. So you are excused, Mr. Dye.

The lady, please?

Venirman: I am Mrs. Corder, and my husband is pastor of a church and he has a heart ailment, and the doctor has told me to keep a constant watch over him. I don't know what time something might happen.

The Court: Well, I think I have to disallow that excuse, Mrs. Corder. I am sorry.

The other gentleman, please?

Venirman: I am suffering with stomach trouble, nervousness, and my eyes.

The Court: You are suffering yourself?

Venirman: Yes, sir. My name is R. A. Fillingim.

The Court: R. A. Fillingim?

Venirman: Yes, sir.

The Court: Now, considering your condition as you know it to be, are you able to sit as a juror?

Venirman: I couldn't give proper service as I get very nervous when I am in meetings. I am a disabled minister, and I had to quit the ministry because of this.

The Court: Very well. Mr. Fillingim you are excused. Very well, that leaves 55.

From your answers it appears you are all qualified to serve as jurors in this Court. I will ask that you now rise and be sworn to serve as jurors in this Court.

(Whereupon the oath was administered by the Clerk of the Court.)

The Court: The Court is going to declare a recess at this time. There are 55 jurors who have been sworn. I will ask that their names be mixed and that a new list be prepared, which will list the occupations, and I will ask that you return in 30 minutes and at that time you will be seated in a new order.

The jury is now excused for 30 minutes.

(Short recess.)

(The following proceedings were held out of the presence and hearing of the jury panel.)

The Court: Gentlemen, the Clerk has handed to me two motions the defendants each filed this morning. I believe it is a motion and brief, is that correct?

Mr. Foreman: Yes, Your Honor.

The Court: A motion on behalf of the Defendants O. P. Carrillo and Jesus Oliveira?

Mr. Foreman: There is a second section which includes the Defendant Santiago Garcia and the San Diego State Bank.

The Court: Have copies been served on the United States Attorney?

Mr. Foreman: Yes, Your Honor.

Mr. Wilkey: This morning, Your Honor, after the questioning of the jury by the Clerk. We saw it at that time.

The Court: Well, I want to give the United States Attorney an opportunity to study it before I consider the motions, and let's hope that that can be considered sometime later in the day.

Anything further, gentlemen?

Mr. Sharpe: If Your Honor please, in connection with those motions, I called the attention of the United States Attorney to the fact this morning no formal judgment has ever been entered by Judge Hannay in connection with the first trial of this case, and we advised him that we did plan to contact Judge Hannay as soon as he was available and ask him to do that, to enter a formal judgment insofar as the defendants who were acquitted, and a mistrial to the other defendants, and as yet we have not been able to get him to make that request.

The Court: Is that the basis of this motion?

Mr. Sharpe: Your Honor, it is not at this time because I did not know until this morning that the judgment had not been entered and therefore when Judge Hannay acts in the matter, I would like to add one sentence to my motion, to amend it to state that judgment had been entered on the verdict which we have alleged in the motion.

The Court: Yes.

Mr. Wilkey: I don't think, if I understand the motion and brief here, I don't think the failure to enter the judg-

ment by Judge Hannay has anything to do with the motion. They want the judgment entered in order to have a judgment on which to predicate their motion, as I understand their position.

Mr. Sharpe: That is substantially correct, in addition to the verdict which has already been entered.

Mr. Wilkey: I should think under the motion of acquittal on these counts that the defendants should prepare and submit to Judge Hannay such judgment of acquittal as they desire entered.

The Court: Well, I suggest that be done, and Court will recess about 30 minutes.

(Short reces.s)

The Court: Be seated, please.

Gentlemen, are we ready to proceed with the selection of the jury in the case of the United States of America vs George B. Parr, et al?

Mr. Foreman: Subject to our motion heretofore filed, Your Honor.

Mr. Wilkey: The Government is ready, Your Honor.

The Court: Very well. The other cases that were set for trial this morning will be passed. The attorneys, defendants and the witnesses in those cases are excused. We will ask that you remain subject to call on 24-hour notice.

Ladies and gentlemen of the jury panel, I will now propound to you a number of questions which will bear upon your qualifications to serve as jurors in the case of

the United States of America vs George B. Parr, et al. That means "and others." In this case there are eleven defendants. There are nine natural persons, all men, and two State banks. The Texas State Bank of Alice, Alice, Texas, and the San Diego State Bank of San Diego, Texas. I will ask if you know the various defendants, and so that you may properly and correctly answer the question, I will ask that the defendants rise, and face the jury panel.

First, do any of you know George B. Parr? If so, will you please rise?

(No response.)

You may be seated, Mr. Parr.

Do any of you know D. C. Chapa, the gentleman who is now standing?

(No response.)

You may be seated.

Do any of you know B. F. (Tom) Donald, Jr., the gentleman who is now standing?

(No response.)

Obviously none of you do.

Do any of you know Jesus G. Garza, who is now standing? You may be seated.

Do any of you know Santiago Garcia?

(No response.)

Do any of you know Octavio Saenz?

(No response.)

Do any of you know Jesus Oliveira?

(No response.)

You may be seated.

Do any of you know O. P. Carrillo?

(No response.)

You may be seated.

Do any of you know Oscar Carrillo, Sr.?

(No response.)

You may be seated.

Do any of you know any of the officers or directors of the Texas State Bank of Alice, at Alice, Texas, or have you ever done business with that bank? If so, will you please rise?

(No response.)

Do any of you know any of the officers or directors of the San Diego State Bank of San Diego, Texas, or have any of you ever done business with that bank?

(No response.)

I will explain that this is a criminal action instituted by the United States through a grand jury indictment against these eleven defendants, nine natural persons, all

men, and two State banks. It is an indictment in 20 counts. Count 1 alleges an offense against the United States in that it alleges that an artifice to defraud was devised, and that the United States mails were used in the furtherance of the scheme, artifice to defraud.

Counts 1 through 19 allege similar uses of the mails in the furtherance of the alleged scheme and artifice to defraud. The alleged offenses having taken place during the period commencing in 1949, is that correct?

Mr. Wilkey: Yes, Your Honor.

The Court: 1949 through 1954.

Mr. Wilkey: Yes, Your Honor. 1949 until February 1954.

The Court: Commencing in 1949 and continuing up through February of 1954.

The scheme and artifice to defraud, the alleged scheme and artifice to defraud is a scheme and artifice to defraud the Benavides Independent School District and the taxpayers thereof and the State of Texas and the taxpayers thereof. I will ask if any of you have any knowledge concerning these alleged offenses, and if you have formed any conclusion concerning the alleged offenses, you will please rise.

I see two gentlemen and one lady standing.

The gentleman's name?

Juror: John N. Gilbert.

The Court: John N. Gilbert, No. 16. I will ask you if you have reached any conclusions regarding these offenses?

Juror: Yes, I have.

The Court: And your name please?

Juror: Thomas C. Jackson.

The Court: Have you reached any conclusion—

Juror: Just as to what I read in the newspaper, and I think I have.

The Court: Is your knowledge entirely what you read in the newspaper?

Juror: Yes.

The Court: And you think you have reached a conclusion?

Juror: Yes, I have.

The Court: And your name?

Juror: I am Mrs. Clara Corder.

The Court: And Mrs. Corder, you believe you have reached a conclusion regarding the matter?

Juror: Yes, sir, I certainly have.

The Court: And Miss Hanner, you believe you have reached a conclusion?

Juror: Yes, I have.

The Court: And the next gentleman, you are of the same opinion? Mr. E. J. Sims?

Juror: Yes, sir.

The Court: And the first gentleman in the second row, your name, please?

Juror: Marvin C. Baker.

The Court: No, the first gentleman in the second row.

Juror: T. H. McGregor.

The Court: You believe you have reached a conclusion regarding the case?

Juror: Yes, I do.

The Court: The next gentleman is Marvin C. Baker?

Juror: Yes.

The Court: You believe you have reached a conclusion regarding the case?

Juror: Yes.

The Court: Very well.

The first gentleman in the third row, your name?

Juror: Ben Collins.

The Court: You believe you have reached a conclusion?

Juror: Yes.

The Court: The next gentleman?

Juror: Walter E. Blizzard.

The Court: And have you reached a conclusion regarding the case?

Juror: There is one point I would want to qualify and get more information on.

The Court: Just a moment, please.

Mr. Foreman: May we ask that he approach the bench?

The Court: Yes, I will ask that you all approach the bench.

And the next gentleman?

Juror: William E. Alley.

The Court: Will you all please approach the bench?

(The following proceedings were held at the bench out of the presence and hearing of the jury panel.)

The Court: Now, is it your proposal that we talk to them one at a time?

Mr. Foreman: I think it would be better. There might be something they would say inadvertently.

The Court: Very well. I will call those persons to the bench one at a time. We want to hear what they have to say out of the hearing of the balance of the jury panel, and first Mr. John N. Gilbert.

(Juror John N. Gilbert approached the bench.)

The Court: Mr. Gilbert, I want you to tell us what conclusions you have reached, out of the hearing of the balance of the jury panel.

Juror: Well, sir, I have been acquainted with the defendant's activities for some time. I was with Standard Oil of Texas for ten years as a scout and leaser, and I spent quite a bit of time in South Texas. In fact, I scouted for Standard Oil of Texas frequently down there.

The Court: You stated you had reached some conclusions regarding the case. Will you tell us about that?

Juror: I have read the papers and followed it closely, and I feel, in my opinion, he is guilty.

The Court: Well, I think Mr. Gilbert will be disqualified.

I will next call Thomas C. Jackson.

(Juror Thomas C. Jackson approached the bench.)

I want you to tell us what your conclusions are, if you have reached any conclusions, and tell us out of the remainder of the jury panel.

Juror: My point is that I have been keeping up with the Parr case, and I have made a conclusion that probably there were some reasons why I thought maybe the convictions were going as they were, and probably would prejudice my feelings.

The Court: You feel you are prejudiced?

Juror: I am prejudiced in the question.

The Court: I believe Mr. Jackson would be disqualified. You may be seated.

Next, Mrs. Clara E. Corder.

(Juror Clara E. Corder approached the bench.)

Mrs. Corder, you have stated you have reached conclusions regarding this case, and we want you to tell us

what they are out of the hearing of the remainder of the jury panel.

Juror: Well, I tell you, I have kept up with the case—

The Court: Can you all hear?

Mr. Wilkey: No, we can't.

The Court: Speak loud enough so all can hear you.

Juror: Well, in keeping up with the case through the newspapers and over the radio, I have become very prejudiced against Mr. Parr. I think he has done an unhumanly deed.

The Court: You are disqualified. You may be seated.

Miss Edith Hanner.

(Juror Edith Hanner approached the bench.)

We want you to tell us what conclusion you have reached about the case out of the hearing of the remainder of the jury panel, but talk loud enough so everyone here can hear you.

Juror: I have come to the conclusion from the newspaper publicity and the stories that he is guilty.

The Court: I believe Miss Hanner would be disqualified. You may be seated.

Next is Mr. Max Joachim.

(Juror Max Joachim approached the bench.)

We want you to tell us the conclusion you have reached out of the hearing of the remainder of the jury panel, and we want you to speak loud enough so we can hear you.

Juror: I have read either about it in the paper or—I have formed my opinion. Do you want me to tell you what it is?

The Court: You may if you wish.

Juror: That he is guilty.

The Court: I believe Mr. Joachim would be disqualified.

Juror: That is my honest opinion. No other reason but my own belief.

The Court: The next is E. J. Sims.

(Juror E. J. Sims approached the bench.)

Mr. Sims, will you state to us the conclusions you have reached in this case, how you have reached them, and I want you to make your statements out of the hearing of the remainder of the jury panel, but speak loud enough so those in this little group can hear you.

Juror: I believe they are all guilty.

The Court: You think they are all guilty?

Juror: Yes, from what I have read, and some men born and raised down there talked to me about it.

The Court: I believe Mr. Sims is disqualified.

Mr. T. H. McGregor.

(Juror T. H. McGregor approached the bench.)

Mr. McGregor, you say you have reached a conclusion about the case. I want you to tell us what your conclusions are, and how you have reached them, out of the hearing of the remainder of the jury panel, but loud enough so everyone here can hear you.

Juror: I believe so. I have kept up with Mr. Parr's activities, but generally it is on account of the man's reputation, and in fairness to what goes on, I shouldn't be on the jury, from what I know about the man.

The Court: I believe he is disqualified.

Juror Marvin C. Baker?

(Juror Marvin C. Baker approached the bench.)

Mr. Baker, you have stated that you have reached conclusions regarding the case. Will you tell us what your conclusions are and how you have reached them, out of the hearing of the balance of the jury panel, but speak loud enough so everyone in this huddle can hear you.

Juror: I have reached the conclusion from what I have read in the newspapers.

The Court: What conclusion have you reached?

Juror: I feel they are guilty.

The Court: I believe under the circumstances Mr. Baker would be disqualified. You may be seated.

Ben Collins.

(Juror Ben Collins approached the bench.)

Mr. Collins, you have answered that you have reached conclusions regarding this case. I want you to tell us what your conclusions are and how you have reached them. We want you to tell us out of the hearing of the balance of the jury panel, but speak loud enough so that everyone here can hear you.

Juror: I have read in the papers when it was tried before, and I reached a conclusion as to what I thought happened

The Court: And do you believe that would disqualify you from serving as a juror, an impartial juror?

Juror: Well, I feel that it would, yes, sir.

The Court: Very well. I believe Mr. Collins is disqualified.

Mr. Walter E. Blizzard.

(Juror Walter E. Blizzard approached the bench.)

Mr. Blizzard, you have stated that you have reached a conclusion regarding the case, and will you tell us, we want you to tell us what your conclusions are and how you reached them, out of the hearing of the balance of the jury panel.

Juror: Yes, sir, well, I should say that my opinion, Judge, is a partial one. It isn't a fair one. You ap-

preciate that. Anybody is innocent until proven guilty, and I am sure these men are innocent so far as that is concerned, but I kept up with the first, unfortunately I kept up with the case. I read too much about it.

The Court: Do you believe that disqualifies you from serving as a fair and impartial juror?

Juror: I have been a great admirer of Mr. Foreman's, but I watch him as he goes to court through the newspapers, and I am sure, through the newspapers alone, it would be difficult to get a fair trial.

The Court: Like the people, watching any other champion?

Juror: I wouldn't want to be a judge in a court where anyone had a partial opinion, but my opinion may be right or wrong, but I wouldn't want to trust my conscience.

The Court: Very well. I believe he is disqualified.

William E. Alley.

(Juror William E. Alley approached the bench.)

Juror: Your Honor, I discussed this with a lot of men while I was working from down in the county, and I have read a lot too, and I have formed an opinion.

The Court: You have formed an opinion about the case?

Juror: I have.

The Court: Do you think your opinions are such they will disqualify you to serve as a fair and impartial juror?

Juror: It wouldn't be fair because—I am sure it wouldn't

The Court: Very well. I think Mr. Alley is disqualified. You may be excused.

Mr. Foreman: Judge, we want to, in view of this testimony, renew our motion for change of venue heretofore filed, and offer this testimony as a part of our record in that case on that motion.

The Court: What says the United States Attorney?

Mr. Wilkey: First of all, I don't believe that the fact that a number of jurors have answered the Court's inquiry fairly and honestly would affect the rest of the panel. It was all done out of the hearing of the rest of them, and we are now concerned with those you have left, and who have remained silent in response to the very clear inquiry of the Court and examination of the Court, have kept silent, so we assume they are fair and impartial. If by the number of strikes, ten and six, we can get a panel out of this group here, I think it is entirely proper we do so and, secondly, even if we couldn't out of this panel, I think we might conceivably summon additional jurors, and the third thing I want to call to Your Honor's attention is that not until this morning has the defendant ever made any kind of a motion for change of venue based on prejudice in this Division. The only motion ever made was based on the argument that the indictment legally should be in the Corpus Christi Division, and that in the interest of justice because of the convenience of the witnesses, it should be moved, and which was all denied by Judge Hannay. Now, this is the first time any motion based on prejudice existing

in the Houston Division has ever been made, and this is the 18th of March. The verdict was rendered on the 18th of December. It has now been three months, during which time the defendants had an opportunity to speak, and they have during that time not asked to make any such motion, and furthermore, the Court had before it another panel of jurors last week, out of whom there were more than sufficient qualified jurors obtained, even with the large number of strikes, twelve and twenty, being double the required amount, so we feel because these gentlemen have been honest and given their opinion, and will be excused, that does not mean the rest of the jury is not available and it does not mean in the Houston Division we cannot secure the qualified jurors.

Mr. Foreman: May it please the Court, we do not concede Mr. Wilkey's inference that the normal amount of strikes is six and twelve. For this case—

Mr. Wilkey: Six and ten.

The Court: Well, that is not the motion before the Court. It is true the United States Attorney did mention it. If you want to make some point on it, fine, but let's don't dwell on it.

Mr. Foreman: I wasn't planning to make an extended argument. We think that over 20 per cent, or approximately 20 per cent of the jurors have expressed an opinion based upon facts which are available to all, and it is not a question with reference to venue as to whether or not 12 men could be found who would say they were unprejudice, but as to whether or not there is a likelihood that prejudice might enter into the deter-

mination of their verdict and we feel that this very large number of jurors who have stated, many of them, that their actions were based on the newspaper accounts, has given us the best appraisal we could have, or this Court could have in determining whether or not the possibility of that fact exists. I will say to the Court, I had not realized until just now the overwhelming prejudice that evidently has been generated by the other trial, including the mistrial last week.

The Court: I don't see how any prejudice could have been generated by that. We didn't hear one word of testimony.

Mr. Foreman: Only—I don't think the trial did, but it called to the attention of these jurors and gave them time to think about the publicity that has been in effect, and we do here now request the twenty and twelve ruling as to strikes.

The Court: Very well. We will cross that bridge when we come to it. I am not going to rule on that now. I have a motion now for change of venue, and I don't want to get that snarled up now.

Mr. Foreman: I understand that, and I won't argue that any more now. Will we have to put that in writing? I am not sure. Mr. Wilkey is right. Our motion was not based on that formerly, and our position is, it is based on what we have learned here this morning. Twenty per cent of the panel—

Mr. Wilkey: If Your Honor please,—if Your Honor is considering a percentage of the panel, Your Honor should also take into consideration the panel called last week

in which the same questions were asked, and a few were excused, but the second point is that it is not the number or percentage that are excused. It is whether or not jurors, and I would say that 90 to 95 per cent of the two panels called have indicated they have no opinion. If 90 to 95 per cent have no opinion on the two panels, we think that is certainly proof a fair jury can be obtained.

The second point, on the law, we are familiar with the law on the change of venue, having had to brief it on other cases recently, and the law puts it squarely in the discretion of the trial judge as to change of venue, the feeling being that the trial courts do and have the best opportunity to appraise whether or not a fair jury can be obtained. I am not aware offhand, there may be one, I don't think there is more than one case in which it was held discretion was opposed by the Appellate Court.

The third point I wanted to make was this, realizing that the defendants might consider that they should get a change of venue, we asked the Court some weeks ago to fix the time for the filing of such motions, which the Court did, and at that time the defendants apparently did not consider they were prejudiced by the other trial having taken place in this Division and made no such motion, and we therefore considered, and I am sure the Court was entitled to consider, that the defendants considered their best interests would be served by having the trial in this Houston Division, and we feel that nothing that has happened today or the other day when the jury was empaneled has altered the fact that we can get a qualified jury from this Division, and that is the test of all the cases, whether we can secure a qualified panel.

Mr. Foreman: We think the test is whether or not it might be fair, not whether or not you can get 12 men who will say they have no opinion. We recognize it is in the discretion of the Court, and possibly or even probably the overwhelming burden of decisions have sustained the trial judge, but we do not consider that might makes right. But if there is any question in this Court's mind, we would like to ask the Court's idea on what is right, as any other tribunal, and we base it solely on the evidence before the Court this morning as to what might be true in January and February might not necessarily be true in March, but this is today and these are the jurors called for today.

The Court: We have eleven jurors out of 53 who are definitely disqualified, and will be disqualified, and they will be excused.

Now, on the motion for change of venue, I agree with the United States Attorney that those persons entertaining a prejudice have come forward and so stated, and they will be excused as jurors in this case. Most of them stated that they reached their conclusions from reading the newspapers. In a society such as ours, you are going to have that. You are going to have people reading newspapers and you are going to have that in any Division in this District. Of course, we had some, a few on this panel, who were excused because they could not read and write, but they were excused for another reason. I can only accept what the jurors have given me in their answers. I accept what those eleven jurors have told me in full faith, and accept the answers of the others in full faith and I do believe that we can get a fair and impartial jury to

try these defendants in Harris County, and also another thought I had while you gentlemen were talking.

We could reach the situation in any case against publicity that if the case if publicized, the defendants cannot be tried, and I don't think we should ever reach that in our jurisprudence, so the motion for change of venue is overruled.

Mr. Wilkey: May I add, for the record, Your Honor, that we have collected the Corpus Christi newspaper bearing on this case and that if there is newspaper publicity in Houston, there has been overpowering publicity in Corpus Christi, the Division to which they have asked to be removed.

The Court: It is uncalled for. I have ruled already.

(The folowing proceedings were held in the presence and hearing of the jury panel.)

The Court: I will ask that these jurors again rise when I call your names. John N. Gilbert, Thomas C. Jackson, Mrs. Clara E. Corder, Miss Edith Hanner, Max Joachim, E. J. Sims, T. H. McGregor, Marvin C. Baker, Ben Collins, Walter E. Blizzard, William E. Alley.

Each of you are excused, but not finally excused. From your answers, you have disqualified yourselves as jurors in this case. You may be called for further service, perhaps to serve in some other case or cases within the next two weeks, but you are now excused subject to further call

within the next two weeks, and if you are not called, you will be under no obligation to report back, so those of you who are now standing are excused under those instructions.

The defendants are represented in the defense of this case by Mr. Percy Foreman of Houston. Please rise, Mr. Foreman. Gilbert Sharpe of Brownsville, and by a third, Mr. Luther Jones of Corpus Christi, who is not here this morning, but he may be in the trial later, during the trial. I will ask if any of you know Mr. Foreman, Mr. Percy Foreman, Mr. Gilbert Sharpe, who are standing before you, or Mr. Luther Jones of Corpus Christi? If so, will you please rise?

I see three gentlemen standing. They are all near the head of the list. The first gentlemen is Mr. Frank Allen.

Juror: I know about Mr. Foreman through the papers. He is one of the best criminal lawyers in the State if not in the Country. I have no personal acquaintance with the man.

The Court: Have you ever met him?

Juror: I have never had the pleasure.

The Court: Considering that you know Mr. Foreman by reputation, considering that he appears here representing the defendants, would that fact in any way bias or prejudice your judgment, or would it prejudice you in the trial of this case, either in favor of or against his clients?

Juror: I believe not, sir.

The Court: And if you should be selected as a juror to try this case, would you try it fairly on the evidence as you see it?

Juror: Yes, sir.

The Court: The next gentleman, J. D. Franklin.

Juror: I know Mr. Foreman.

The Court: How long have you known him?

Juror: I was examined on a jury on a case with him in Langston King's Court.

The Court: Do you have any other acquaintance with him?

Juror: No, sir.

The Court: Have you ever been introduced to him?

Juror: No.

The Court: Then your only knowledge of Mr. Foreman is you were on a jury panel and examined. Were you selected as a juror in that case?

Juror: No, sir.

The Court: Considering your experience in that respect, would that in any way bias or influence your judgment or prejudice you either in favor of or against Mr. Foreman's clients?

The Court: If you should be selected as a juror to try this case, would you try it fairly on the evidence as you see it?

Juror: I would.

The Court: The next gentleman is C. L. Sage. Which of these gentlemen do you know?

Juror: I never have met him personally, but I know his father and his brother.

The Court: Mr. Foreman?

Juror: Yes.

The Court: You don't know Mr. Foreman personally, but you knew his father and brother. Which brother do you know?

Juror: Zimmie.

The Court: How long have you known him and how long have you known his father?

Juror: I have known the father since I was sheriff in Polk County about 1935, and I have known Zimmie since, I imagine, around 1934 and 1935.

The Court: Did you live in Polk County?

Juror: I did.

The Court: How long did you live in Polk County?

Juror: Practically all my life. I moved down here in '43.

The Court: Considering you know Mr. Foreman's father and brother, that you are from Polk County, and considering that Mr. Foreman appears here as attorney representing the defendants, would those facts, as you know them, in any way bias or prejudice you, your judgment, either in favor of or against his clients?

Juror: No.

The Court: If you should be selected as a juror to try this case, would you try it fairly on the evidence as you see it?

Juror: I would.

The Court: J. L. Pixley.

Juror: I have never met Mr. Foreman, but I do know his brother over in Livingston.

The Court: How long have you known Mr. Zimmie Foreman?

Juror: Off and on, I would say, since around 1930.

The Court: You lived in Livingston?

Juror: No, sir, eight miles south.

The Court: Considering you know Zimmie Foreman, and considering his brother, Percy, appears here representing the defendants, would these facts in any way bias or influence your judgment in favor of or against Mr. Foreman's clients?

Juror: No.

The Court: If selected as a juror to try this case, would you try it fairly on the evidence as you see it?

Juror: Yes, sir.

The Court: The Government is represented in the prosecution of this case by United States Attorney Malcolm Wilkey. Would you please rise, Mr. Wilkey? And by Assistant United States Attorney Edgar O. Bottler. Will you have other assistants in the trial of the case?

Mr. Wilkey: Mr. Harold Freeman will be with us at the table.

The Court: I will ask if any of you know Mr. Wilkey, Mr. Bottler, or Mr. Freeman? If so, will you please rise?

(No response.)

Obviously none of you do.

You may be seated.

I will ask if any of you have any particular prejudice in this type of a case wherein the United States mails are alleged to have been used in a fraudulent scheme and a conspiracy to violate the law in that respect? If any of you have any particular prejudice on that type of a suit, will you please rise?

(No response.)

Obviously none of you do.

Have any of you or any of your close friends or relative ever been involved in such a suit as a defendant or a witness?

(No response.)

Obviously none of you have.

I am going to ask if any of you have ever lived in a number of counties in Southwest Texas, and I will read off these names. Have any of you ever lived in Duval County, Jim Wells County, Webb County, Brooks County, Jim Hogg County, Zapata County, Nueces County, McMullen County, LaSalle County, or Live Oak County? If so, will you please rise?

I see two gentlemen standing. The first gentleman?

I see a lady now standing. Is there anyone else who would answer any of those questions yes?

Your name, sir?

Juror: A. C. Gilbert.

The Court: What is your name?

Juror: A. C. Gilbert. I have lived in Nueces County and Jim Wells County, Duval County, and right through that strip of counties. I was with an oil company.

The Court: How long did you live in that area?

Juror: From about 1935 to 1937.

The Court: What business were you engaged in?

Juror: Geologist with an oil company at that time, with the Arkansas Fuel Oil Company.

The Court: Very well, sir. You may be seated.

The lady?

Juror: Mrs. Holman.

The Court: What is your answer to the question?

Juror: Well, I lived in Kingsville about two years.

The Court: How long ago?

Juror: 1952 and 1953.

The Court: And in what business or activity were you engaged in there?

Juror: I was a stenographer while my husband was attending college.

The Court: And the gentleman, please?

Juror: H. V. Weaver.

The Court: What is your answer to the question?

Juror: I lived in Nueces County and traveled from Corpus Christi to various points.

The Court: And how long did you live there?

Juror: The last half of 1936 and the first half of 1937.

The Court: And in what business were you engaged there?

Juror: Field salesman for the oil and supply division of United States Steel.

The Court: Very well, sir, you may be seated.

If any of you have any relatives who have lived in any of the counties mentioned, please rise. I see two gentlemen standing.

Your name?

Juror: Charles Kemp.

The Court: What is your answer to the question?

Juror: All my relatives on the other side are from the Valley, and all through the Valley, Alice, Laredo, and I am not familiar with the counties, the exact locations, but I am sure some of them live in those exact locations.

The Court: Webb County is one of the counties named.

Juror: I have some relatives in Laredo.

The Court: How many relatives do you have there and what relationship?

Juror: My uncle, and I believe that is the only relative I have in Laredo, and I believe I have an aunt in Alice, Texas. I am not sure.

The Court: That is in Jim Wells.

Juror: Yes, sir.

The Court: What occupation?

Mr. Foreman: May we ask his mother's name?

The Court: What are the names of your relatives there in Laredo?

Juror: Mr. Arthur Bolz.

The Court: I know Mr. Bolz. Isn't he with the Highway Department?

Juror: Yes, sir. I am trying to think of the name of my aunt. I am not sure they are in Alice. I think they are in McAllen now. Mrs. Lewis Dussling.

The Court: You may be seated.

And this gentleman?

Juror: S. W. Brewer.

The Court: S. W. Brewer. What is your answer to the question?

Juror: I had a sister who lived in Alice for a period, I am not even sure, possibly a year.

The Court: How long ago?

Juror: About nine years ago.

The Court: And what was her name?

Juror: Canfield. Her husband was an automobile mechanic.

The Court: Very well. You may be seated, Mr. Brewer.

Have any of you ever had a lawsuit or dispute with the

United States Government? Is there anyone who would answer that question yes?

Very well, sir, your name?

Juror: C. L. Sage.

The Court: What sort of suit or dispute?

Juror: It was an insurance policy I had with an insurance company and it went broke, and the Government sued the policyholders.

The Court: Do any of you have any relatives or close friends who have had lawsuits or disputes with the United States Government?

(No response.)

Obviously none of you have.

I will ask if any of you have formed any opinion concerning the Defendant George B. Parr which might in any way affect your verdict?

Very well. I see two gentlemen standing. Mr. Gilbert and Mr. Kemp. We will return to you gentlemen later.

Have any of you formed any opinion relating to Duval County which might in any way affect your verdict if you should be selected as a juror to try this case?

Again Mr. Gilbert. Very well. We will talk to you later. Mr. Gilbert.

I will ask if any of you are now or if you have ever been a peace officer?

One gentleman standing. Your name?

Juror: Richard Arthur.

The Court: And what is your answer to that question?

Juror: I was deputy constable in Precinct No. 8 in Harris County, 1946 and 1947.

The Court: Is that your entire experience as a peace officer?

Juror: Yes, sir.

Mr. Foreman: What years were those?

Juror: 1946 and 1947.

The Court: And your name, sir?

Juror: Anthony Genaro. I was a policeman in Freeport about three months in 1942.

The Court: Is that your entire experience as a peace officer?

Juror: Yes, sir.

The Court: Very well, sir. You may be seated.

Have any of you ever been a member of a school board?

(No response.)

Obviously none of you have.

Have you ever been a collector or assessor of taxes?

(No response.)

Obviously none of you have.

Have you been employed in a bank in any capacity?

Juror: Yes, I have.

The Court: I thought I would get some bank personnel out of this crowd.

Juror: I am L. F. Crowell.

The Court: The name again, sir?

Juror: Crowell, capital C-r-o-w-e-l-l.

The Court: Very well. What is your banking experience?

Juror: I worked in a bank in Chicago in 1923, 1924 and 1925.

The Court: In what capacity?

Juror: Teller.

The Court: Very well, sir. You may be seated.

Have any of you ever served as a grand juror in a State or Federal Court?

(No response.)

Obviously none of you have.

Have any of you ever formed or expressed an opinion concerning the guilt or innocence of any defendant in this trial?

Juror: What was the question, sir?

The Court: Have any of you ever formed or expressed an opinion concerning the guilt or innocence of any defendant in this trial?

Very well. I will talk to you gentlemen later. A third man has now stood.

What is your name?

Juror: H. V. Weaver.

The Court: Very well.

Do any of you now have such an opinion?

The same gentlemen are standing. We will talk to you gentlemen later.

Do any of you know any reason why you cannot act as a fair and impartial juror in the trial of this case? If so, will you please rise?

I will ask counsel if either side have any further questions they wish to have asked of the jury panel?

Mr. Wilkey: No questions from the Government.

Mr. Foreman: Just a moment. May we confer, Your Honor?

(The following proceedings were held at the bench out of the presence and hearing of the jury panel.)

Mr. Foreman: We want to ask the Court, could you ask a more definite question about whatever they may have read concerning the trial or former trial as influencing in any way the opinion they may have had? We think we have touched on it very slightly.

The Court: I think we have touched on it very carefully, and we have gone over the question very carefully.

Mr. Foreman: The question was really do you have knowledge of it, but I don't believe Your Honor has asked a point-blank question. They may have or they may not have read the newspapers about the case.

The Court: Very well. I will ask that question.

Mr. Wilkey: Will you dictate it and write it out?

Mr. Foreman: Ask the question if they have read anything about the case and if they have, have they formed an opinion from it?

The Court: Have you read in newspapers about the case?

Very well.

Mr. Wilkey: One other thing, you might ask if any of them are related to any counsel. You have asked if they know them. The last time you got a cousin of Gilbert Sharpe's on the panel.

(The following proceedings were held in the present and hearing of the jury panel.)

The Court: I will ask now if any of you have read any newspaper accounts of this case? If so, will you please rise?

I see a rather large number standing. With the exception of Mr. Kemp, Mr. Gilbert, and Mr. Weaver, who I expect to talk to out of the hearing of the jury ot the bench, and I will ask Mr. Kemp, Mr. Gilbert and Mr. Weaver to be seated, I am going to talk to you gentlemen especially. I will ask all those who are standing if from the newspaper accounts you have read, if you have reached any conclusion regarding this case? If so, will you please raise your hand?

Now, I have asked you to raise your hand. On the second time around, you had no conclusions last time, did you?

Juror: No, sir.

The Court: Very well. Your name is Frank Allen. Very well. I will indicate Mr. Allen. The gentleman who wanted to speak, are you raising your hand?

Juror: Is a conclusion and an opinion the same thing, sir?

The Court: Your name, sir?

Juror: Richard Arthur.

The Court: Very well. You may be seated.

I will ask now if any of you are related to any of the attorneys in this case, Mr. Foreman, Mr. Sharpe, Mr. Jones, Mr. Wilkey or Mr. Bottler? If so, will you please rise?

(No response.)

I want to speak to the five gentlemen at the bench out of the hearing of the balance of the jury panel. I will ask the reporter and counsel to come to the bench.

(The following proceedings were held at the bench out of the presence and hearing of the jury panel.)

Mr. Foreman: Did the Court count the number that indicated they had read it? I counted 34, but I didn't know whether I counted them all or not.

The Court: I didn't count them. I am surprised there were not more, actually.

Mr. Frank Allen.

(Juror Frank Allen approached the bench.)

The Court: Mr. Allen, you stated that you have an opinion.

Juror: Yes, sir, the opinion is this, sir, that—may I be frank?

The Court: Yes.

Juror: That if the United States Government has gone to so much trouble to make up a case against a group of folks down there, from the newspaper accounts I am inclined to believe the United States Government is pretty right.

The Court: I believe that disqualifies Mr. Allen.

Juror: I haven't the right to say I think anybody is guilty, but I believe the Government is right.

The Court: Mr. Richard Arthur.

(Juror Richard Arthur approached the bench.)

The Court: You have stated you have an opinion, Mr. Arthur. I want you to tell us what your opinion is, how you arrived at it, but I want you to speak so just this group can hear you.

Juror: I have not formulated an opinion as to his guilt or otherwise, but I do believe it was a—

The Court: You feel what?

Juror: The conditions were not very good in Duval County, and in that section of the country.

The Court: Is it your opinion as such it would disqualify you to serve as a fair and impartial juror?

Juror: I would try to look at it with an open mind.

The Court: Do you entertain a prejudice?

Juror: No, sir, I don't believe I do.

The Court: If you are selected as a juror to try this case, would you try it fairly on the evidence as you see it?

Juror: I will.

The Court: From the answers, Mr. Arthur, I don't believe he is disqualified.

Mr. Foreman: May I ask a question?

The Court: You may.

Mr. Foreman: Is it possible such an attitude as you might have, or bias or conclusion or opinion, as to conditions in Duval County might affect your verdict in this case?

Juror: Well, I don't believe it would, sir. I would try to take my judgment from the—

Mr. Foreman: Do you have any opinion as to whether or not these defendants, George Parr, or any other defendant, are responsible for the conditions as you understand them to be?

Juror: No, sir. I feel there were conditions that were not good there.

Mr. Foreman: Yes, sir.

The Court: That might be said about quite a number of counties. Very well. You may be seated.

Charles D. Kemp.

(Juror Charles D. Kemp approached the bench.)

The Court: Mr. Kemp, I want you to tell us any opinion or conclusion you may have reached and how you may have reached them, out of the hearing of the balance of the jury panel, but I want you to speak loud enough so everyone here can hear you.

Juror: Well, my father had views on Mr. Parr and I respect him, and he kept up with the case from all of what was in the newspapers, and I have formed an opinion, but right now I believe he would be guilty—I mean I am not biased. It is not a set conclusion.

The Court: I believe that would disqualify Mr. Kemp.

Mr. Foreman: What was the first sentence? My father what?

Juror: In some of the allegations in Duval County, and in everything my father kept up with it quite well, and expressed an opinion.

Mr. Foreman: Thank you. No further questions about it.

The Court: A. C. Gilbert.

(Juror A. C. Gilbert approached the bench.)

The Court: Mr. Gilbert, we want you to state whatever opinions or conclusions you may have reached regarding this case. I want your statement to be out of the hearing of the balance of the jury panel, but I want you to speak loud enough everyone here can hear you.

Juror: I would be prejudiced against George Parr, not because of anything personal, but I have two to four friends who have had, in the past years, oil properties in Duval County. I have worked out of Duval County, and they state he was not above finding an illegitimate way to cloud a title, so that would disqualify me.

The Court: Very well. I believe Mr. Gilbert would be disqualified. A. C. Gilbert.

Mr. H. V. Weaver.

(Juror H. V. Weaver approached the bench.)

Mr. Weaver, would you tell us what opinion or conclusions you have reached, and how you have reached them, and I want you to make these statements out of the hearing of the balance of the jury panel, but I want you to speak loud enough so everyone here can hear you.

Juror: As an oil field salesman traveling on properties of large ranch owners, we were given a very bad time not only by Mr. Parr—so far as I know I was never on his property. I did not know he existed. But with reference to Benavides and Driscoll and down in that territory.

The Court: You say you did not know he existed?

Juror: My only opinion and comment was the joking comments like the "Duke of Duval," and so forth.

The Court: From your knowledge of the case and what you have read, have you formed any conclusions in this case?

Juror: I have just made the statement. As to conclusions, no.

The Court: What kind of statements have you made?

Juror: Such as I mentioned, how life estates are created, the W. T. Waggoner Estate created, the Driscoll Estate created, and various estates. I have been on all of them.

The Court: Considering all of that, would those facts in any way bias or prejudice you in the trial of this case, either in favor of or against any party to the lawsuit?

Juror: I don't think so.

The Court: If you should be selected as a juror to try this case, would you try it fairly on the evidence as you see it?

Juror: On the evidence as submitted.

The Court: Do you gentlemen wish to ask any questions?

Mr. Foreman: Mr. Weaver, I am not sure your statement about the large estates—it confused me. Do you have a prejudice against people with large estates?

Juror: No, no, certainly not. I would like to have one myself.

Mr. Foreman: Do you have any feeling or idea—a lot of us hate to use the word prejudice or admit we have it, or we may not mean the same thing. Do you have an opinion now whether any of these defendants, Mr. Parr or anyone else, are guilty of any offense whatever?

Juror: No, I have no opinion. I have not created an opinion. I think the Judge asked the statement if we had made a statement or had read in the papers. Yes, I have offhandedly made unjust statements, we will put it that way. Not based on evidence.

Mr. Foreman: Without using the word opinion, do you have an idea or conception, or do you now believe, without calling it a fixed, unchangeable opinon, do you believe any one or all of the defendants are guilty?

Juror: Well, I don't know. I don't know whether they are or not.

Mr. Foreman: Some people think an opinion means something that can't be changed.

Juror: Oh, no. I don't know whether they are guilty or not. I just know they gave me a bad time at one time, but that doesn't influence me.

The Court: Very well. You may be seated.

(The following proceedings were held in the presence and hearing of the jury panel:)

The Court: Gentlemen, I will excuse as disqualified Frank Allen, Charles D. Kemp, and A. C. Gilbert. They are Nos. 2, 12 and 13. Now, will there be any further requests?

Mr. Foreman: We request, Your Honor, that Mr. Weaver, the last man questioned, be excused for cause.

The Court: Very well. What says the Government?

Mr. Wilkey: I don't object, Your Honor. He may have some sort of opinion that influences his judgment. We don't object.

The Court: I call these names again and as I call your names, will you please rise: Frank Allen, Charles D. Kemp, A. C. Gilbert and H. V. Weaver.

Gentlemen, you four gentlemen are excused, but not finally excused. You are excused under the same conditions the 11 were excused earlier. You are disqualified in this case, but if we find we have other cases to be tried within the next three weeks, you may be called to perhaps serve in some other case, so with those instructions, Frank Allen, Charles D. Kemp, A. C. Gilbert and H. V. Weaver are excused.

I will ask if either side have any challenges for cause?

Mr. Wilkey: The Government has none, Your Honor.

Mr. Foreman: None, Your Honor.

The Court: I will announce that the defendants will have ten pre-emptory challenges, the government will have six pre-emptory challenges. I will ask counsel to indicate your pre-emptory challenges, which you may do during a recess of Court, and I want to be certain that your lists correspond with my list. It started with a list of 54 names, and I want to read the names which I have stricken from the list, and I want the Clerk to check me and see if his list agrees with mine.

No. 2, No. 12, No. 13, No. 16, No. 19, No. 25, No. 27, No. 28, No. 29, No. 30, No. 35, No. 39, No. 41, No. 47, No. 49, No. 51 and No. 53.

Do your lists correspond with mine?

Mr. BOTTLER: Yes, Your Honor.

Mr. Foreman: Yes, Your Honor.

The Court: How much time will you gentlemen want to indicate your challenges?

Mr. Foreman: We will try to be ready during the noon hour. We would like to confer about it. I would like to make the same motion with reference to the number of strikes we made heretofore, for the same reason.

The Court: Very well. I would rather hear those motions out of the hearing of the jury panel. I shall excuse the jury until 2:30.

Mr. Wilkey: May I suggest three o'clock. We will be here some time.

The Court: Will that be satisfactory?

Mr. Foreman: Yes, Your Honor.

The Court: Very well. I will excuse the jury until three o'clock.

I want to give the jury panel these instructions, and to any of you whom may be selected as jurors to try this case, the instructions will hold throughout the trial. I want to say now to all of you that you will not discuss this case or any other case that may be tried before this Court with anybody. You will not permit anyone to discuss it with you. If anyone attempts to discuss the case

with you, you should ascertain who it is and report it to the Court, but even though you are unable to ascertain who it is, you should nevertheless report it to the Court.

You shall not come to any conclusion regarding this case or any other case until you have heard all of the evidence, the argument of counsel, and the charge of the Court, when you will then retire to the jury room to consider your verdict.

I will further want to instruct you, during your services as jurors, you shall not carry on any conversations in the halls or elesewhere, with any defendants or witnesses or with attorneys. Your conversation may be perfectly innocent, but those things lead to mistrials.

With those instructions, the jury panel is excused until three o'clock.

Mr. Foreman: May it please the Court, may we ask that each juror stand? Some of these—we have more information than we had before, but some are so abbreviated that we can't—

The Court: You want addresses and occupations?

Mr. Foreman: Yes, please.

The Court: Very well. We will do that.

Ladies and gentlemen, I will call your names. The list gives your occupation. Sometimes it is a little brief and the attorneys would like to know what sort of work you do and assist them in making their pre-emptory challenges, that is they challenge without any cause being given, and they also want your home addresses, so I think we can run through this rather quickly. As I call your names,

please rise, give your home address, and the kind of work you do.

(The list of jurors was thereupon called and the jurors responded with their addresses and occupations.)

The Court: Very well. Anything further, gentlemen?

Mr. Foreman: Your Honor, I don't know where Round Top, Texas is.

The Court: It is in Fayette County, the northeastern part of the county.

Mr. Foreman: May we approach the bench, Your Honor.

(The following proceedings were held out of the presence and hearing of the jury panel, at the bench.)

Mr. Foreman: My very astute counsel has called my attention to the fact that a number of the employees of the Humble Oil & Refining Company, one of the companies alleged in several of the counts to have been defrauded, are on the jury.

The Court: Allegations of fraud are against the taxpayers, are they not?

Mr. Foreman: Yes, it is, but it is their funds that are paid by the Humble Oil & Refining Company, and being employees of Humble wouldn't matter, but it is well known Humble has a thrift plan in which all of their

employees are also stockholders, and my co-counsel thinks that question should be asked of any of them as to whether or not—thinking out loud, it may do as much harm to ask it as might be accomplished by it.

Mr. Sharpe: I think it would do as much harm to ask it as it would to leave it alone. The point is this, Your Honor, six counts of this indictment specifically mention that company, and we have not had an opportunity to ask the jurors how they might feel with reference to that particular item where their own company is involved.

The Court: I will ask that question if it is suggested.

Mr. Sharpe: I think we would be better off simply to challenge them for cause.

Mr. Foreman: Okay. We will ask for such of these employees that work for Humble, including Mr. Gilmore, rate auditor; Mrs. Robert L. Holman, No. 26; No. 9, Richard Arthur, supervisor for the Humble; No. 40, Mr. D. M. Gillespie, the research technician. As to each of them, we interpose a challenge for cause in that we would like to establish from these four only, Your Honor, as to whether or not they do own stock in the Humble Oil & Refining Company.

The Court: Four, did you say?

Mr. Foreman: Five. No. 1, No. 9, No. 26, No. 40.

The Court: Don't you have one whose husband is—

Mr. Foreman: Yes, he works in the office, that is right. No. 26.

The Court: Do you want me to ask if they are stockholders?

Mr. Foreman: Yes.

The Court: I can ask that right now while you gentlemen are still here.

Mr. Sharpe: Ask if they own stock, and we might get information on all companies, The Texas Company, Texas Pipe Line, Humble Oil & Refining—

The Court: Continental?

Mr. Sharpe: The others are small companies, several of them.

Mr. Wilkey: In order that the Court may know what is concerned in the case to which they raise this question here, there are Humble checks involved. Humble is one of the taxpayers mentioned by name, and the proof will show Humble checks went into the Benavides Independent School District fund, however, none of these Humble checks were pocketed by the—by any of the individual defendants directly. In each of these cases, the checks were deposited, so far as we know, in the correct bank and it became part of the general funds.

The Court: I think the motion is that the defendants are charged with a scheme and artifice to defraud taxpayers of the Benavides Independent School District, and these are named taxpayers.

Mr. Wilkey: Those would include the Humble, but I did want to make clear in some cases the checks in evidence will show the checks themselves were pocketed by one of the individual defendants.

The Court: I understand the indictment, even though no check was pocketed, the Benavides Independent School

District has been revealed—is it indicated this is out of the hearing of the jury, because it must be.

The allegation is that the School District has been rifled by these people and to the detriment of the taxpayer. If the School District has been rifled, I guess the tax rate would be higher.

Mr. Foreman: They are alleged to have been defrauded, the companies they own an interest in.

The Court: That also goes to the State of Texas, and I don't think we can disqualify every taxpayer of the State of Texas.

Mr. Foreman: We are not raising that point, but we think there is a difference in that these people may feel an affinity of interest to their corporate investment.

The Court: Do you want me to ask if they are stockholders in the Humble Company, and others?

Mr. Foreman: You mean Texas and the Texas Pipe Line Company?

The Court: Suppose we find some persons are stockholders, then where are we?

Mr. Foreman: We would want, for the record, to respectfully challenge for cause.

Mr. Wilkey: At that point, we think the Court should go further. If they are stockholders, I think the Court should further ask if that would influence them in trying this case if the company in which they hold stock were among a large group of taxpayers which were alleged—

Mr. Foreman: I don't think the Court ought to argue it. I think he ought to ask the question.

The Court: No. I am just going to ask the question.

Mr. Wilkey: I think to make it clear also, you ought to ask for the fact that they were employed by any company—

The Court: I don't think I will go into employment. I am only requested to go into the stock ownership.

Mr. Wilkey: Okay.

Mr. Foreman: She will get the individual juror's name and his answer, will you not, little lady?

The Official Reporter: Yes, sir.

(The following proceedings were held in the presence and hearing of the jury panel.)

The Court: Are any of you stockholders of Humble Oil & Refining Company? If so, you will please rise.

I see three gentlemen standing. First is Mr. T. P. Gilmore, Mr. Richard Arthur, and your name?

Juror: D. M. Gillespie.

The Court: Let me ask you three gentlemen who are stockholders of Humble Oil & Refining Company if, considering that you are stockholders of that company, and that there are specific allegations of letters mailed to and from the Humble Oil & Refining Company involved in the alleged fraud, if those matters would in any way bias or prejudice or influence your judgment in the trial of this case?

Juror (Gilmore): It would not me.

Juror (Arthur): No, sir, I don't believe it would.

The Court: And Mr. Gillespie?

Juror (Gillespie): No, Your Honor.

The Court: I will ask each of you three gentlemen, if you are selected as jurors to try this case, will you try it fairly on the evidence as you see it, your stock ownership in the Humble Company notwithstanding?

Jurors (Simultaneously): Yes, Your Honor.

The Court: Very well, you may be seated.

I will ask if any of you are stockholders in the C. W. Hahl Company?

(No response.)

Obviously none of you are.

Are any of you stockholders of The Texas Company?

I see one gentleman standing. What is your name?

Juror: Sam K. Seymour.

The Court: Sam K. Seymour III?

Juror: Yes, sir.

The Court: Considering you are a stockholder of The Texas Company, and considering further that one or more of the counts of this indictment alleges letters mailed to and received from The Texas Company, considering that you are a stockholder, would that fact in any way bias or prejudice or influence your judgment in the trial of this case?

Juror: No, Your Honor.

The Court: If you should be selected as a juror to try this case, would you try it fairly on the evidence as you see it, that fact notwithstanding?

Juror: Yes, Your Honor.

The Court: Very well, sir. You may be seated.

Are any of you stockholders of the Texas Pipe Line Company?

(No response.)

Obviously none of you are.

Are any of you stockholders of the Continental Oil Company?

(No response.)

Obviously none of you are.

I believe that is all, gentlemen. Anything further at this time?

Mr. Wilkey: No, Your Honor. Not from the Government.

Mr. Foreman: No, Your Honor.

The Court: It is now 12:35, and I will now excuse the jury panel under the instructions previously given until three o'clock. At that time you will return to this courtroom and I will ask that you take your seats in the order in which you are now seated. You will then take your seats where you are now seated at three o'clock.

Thank you, ladies and gentlemen.

(The following proceedings were held out of the presence and hearing of the jury panel.)

The Court: Will the record show that the jury panel is withdrawn. Is there anything further at this time?

Mr. Foreman: May it please the Court, in view of the diverse nature of the defendants interests in here, the racial backgrounds of some of them being Anglo, others being Latin-American descent, and the corporate nature of two of the defendants, the banks, and in view of the proof showing by some 14 or 15 of the 55 veniremen of widespread interest; in the approximately 34 to 35 indicated reading about the case, the defendants and each of them respectfully request that the strikes be enlarged to 20 for the defense instead of 10, and we have no objection to the strikes for the prosecution likewise being doubled to 12 instead of 6.

The Court: The Rule on peremptory challenges is Rule 24-B of the Federal Rules of Criminal Procedure, which reads, "If the offense charged is punishable by death, each side is entitled to 20 peremptory challenges. If the charge is for imprisonment of more than one year"—and those offenses fall under that category—"the Government is entitled to six peremptory challenges and the defendant or defendants, jointly, to ten peremptory challenges. If the offense charged is punishable by imprisonment for more than one year or"—but not more than one year—"or by fine or both, each side is entitled to three peremptory challenges. If there is more than one defendant, the Court may allow the defendants additional peremptory challenges

and permit them to be exercised separately or jointly. That application of this rule is discretionary with the Court."

A number of the jurors have been excused, others have been stricken for cause, at least one has been stricken for cause. All others excused were excused for cause. According to my figures, we have but 38 jurors left.

Mr. Foreman: According to my count it is 35. No, we started on the line below, but I think I have only 32 lines.

The Court: Well, let me count.

The Clerk says there are 38.

Mr. Wilkey: Your Honor, 38 is my count.

The Court: We have 38 left, and if I had a larger number of jurors, I would probably be inclined to allow the suggestion, but under the circumstances I do not believe that the Court can properly extend his discretion to the point where when the peremptory challenges are taken, we would not have a jury to try the case. So, for the reason stated, the suggestion is not well taken.

Anything further, gentlemen?

Mr. Wilkey: Not from the Government, Your Honor.

The Court: Let me ask defense counsel—

Mr. Foreman: May it please the Court—

The Court: I had a question I wanted to ask. I will ask defense counsel if you have dictated or if you will dictate the judgment for Judge Hannay to sign we discussed this morning?

Mr. Foreman: He has done so himself, and it should have been signed by now. He said it would only take a few

minutes, but I went and got the information and gave it to the young lady at the recess.

The Court: I have motions which were filed this morning at the time we commenced with the qualification of the jury. I have not had an opportunity to read the motions. I do think it is well to dispose of motions before we go into the trial of this case, and when do gentlemen suggest that that be done?

Mr. Foreman: I will leave that up to the Court.

Mr. Sharpe: As quickly as we get through with striking the jury list, Your Honor.

The Court: I understand you want the time between now and three o'clock to make the jury strikes, is that correct, sir?

Mr. Foreman: Actually, Your Honor, it was about 12:05 when we asked that time.

The Court: You now want more time?

Mr. Foreman: I believe it would be—what do you think?

Mr. Wilkey: Perfectly agreeable.

The Court: I wish I had known that so I could have advised the jury not to return until 3:30. I have already advised them in the hearing of everyone present to be back at three o'clock.

Mr. Foreman: Yes, Your Honor, but that was before we had used so much time as we have.

The Court: Very well. Mr. Girard and Mr. Slocum, when the jury returns, ask them not to return to the jury room until 3:30.

Now, getting back to the question of the motions, when do you gentlemen want to argue the motion?

Mr. Wilkey: Your Honor, I have had a chance to cursorily look at it, and it appears to me that the grounds for the motion were those known to the defendants on the 18th of December when the verdict of the jury came in. They have had exactly three months to think about it, and I have just got it this morning, and I haven't read it.

The Court: Whatever they have, the Court is going to have to rule on the motion.

Mr. Wilkey: I think we ought to argue the motions the first thing in the morning before the jury is empaneled.

The Court: Or perhaps this afternoon after the jury has been sworn?

Mr. Wilkey: I will endeavor to study the motions and the brief prior to 3:30, if possible in the time allowed for striking, and give expression to the Court at that time whether we need more time to argue the motions.

The Court: Perhaps tomorrow morning; it would be better to allow both sides to organize their arguments because at that time I want the attorneys to be able to advise the Court what the law is.

Mr. Sharpe: If Your Honor please, I would like to suggest that we have an opportunity to argue the motion prior to the time that the defendants are actually arraigned, because we have some common questions both on the motion.

The Court: I think we can do that.

Mr. Sharpe: Yes, sir.

The Court: Very well.

Court will recess until 3:30, is it? Court will recess until 3:30.

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The Court: Gentlemen, have you made your peremptory challenges?

Mr. Wilkey: Yes, Your Honor.

Mr. Foreman: Yes, Your Honor.

The Court: Hand them to the Clerk, please.

Mr. Foreman: May we approach the bench, Your Honor?

(The following proceedings were held at the bench out of the presence and hearing of the jury panel.)

Mr. Foreman: Your Honor, we have struck Mr. Gilmore, Mr. Arthur and Mr. Gillespie, all of whom are employees and stockholders, by their own testimony, of the Humble Oil & Refining Company, and we do here and now move that they be excused for cause, and we respectfully request that we be allowed three additional strikes to make up for what we believe is probably grounds for cause for these people in view of the indictment alleging the company in which they are stockholders have been defrauded, notwithstanding their testimony as the Court heard it, which is in the record.

The Court: What says the Government?

Mr. Wilkey: We don't have any grounds for that, Your Honor. Their response to questions was fair. Your Honor, we point out that the Humble Oil Company and The Texas Company, for example, are all companies with large stockholders, large numbers scattered all over throughout the State of Texas.

The Court: Of course the motion only goes to three Humble stockholders.

Mr. Foreman: We would make the same motion with reference to the other stockholder, whom we also struck for the same reason.

The Court: Then there are four?

Mr. Foreman: Yes, Your Honor.

The Court: And what was the Government's objection to it?

Mr. Wilkey: We haven't attempted to check any authorities on it at this stage.

Mr. Foreman: Nor have we, Your Honor.

The Court: Well, I am inclined to allow it. I will allow the defendants four additional strikes in lieu of four. Name them again?

Mr. Foreman: T. P. Gilmore, Richard Arthur, Mrs. Robert L. Holman, and D. M. Gillespie.

The Court: Those four will be stricken for cause, and defendants will be allowed four additional strikes.

Mr. Wilkey: Your Honor, this allowance of the four additional strikes there to the defendants changes the num-

ber of eligible jurors here. It adds four names who are now eligible for selection to this that the Government has not yet considered. We haven't even looked at it. We may not change, but we would like leave to reconsider our strikes.

Mr. Foreman: I think that is fair.

The Court: All right. I suggest you do that.

(The following proceedings were held in the presence and hearing of the jury panel.)

The Court: The Clerk will call the names of those who are selected as jurors, and as your names are called, take your seats in the jury box, and I want to announce if there are ladies called, take your seats in the front row because it is rather difficult to get over that step into the back row.

(The Clerk thereupon called the names of the 12 jurors, who took their seats in the jury box.)

The Court: It appears that we have 12 jurors in the jury box. Under the provisions of Rule 24-C, the Court will empanel three alternate jurors. The Rule provides that the Court direct not more than four alternate jurors, in addition to the regular jury, be called and empaneled as alternate jurors. Alternate jurors, in the order in which they are called, shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifica-

tions, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same function, powers, facilities and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be empaneled, and two peremptory challenges if three or four alternate jurors are to be empaneled. The additional peremptory challenges may be used against the alternate jurors only, and the other challenges may not be used against an alternate juror.

The Court will empanel three alternate jurors. There appears at the end of this list the names of seven jurors who have not heretofore been challenged by either side. I will call their names, and as your names are called, I will ask that you please rise and remain standing.

B. A. Black, E. A. Nolan, Max H. Jones, Mrs. Evelyn Mathews, Burl H. Fann, and Marshall Green.

Now, from the seven jurors who are standing, whose names have just been called, I will ask that each side take your peremptory challenges. Let your peremptory challenges be handed to the Clerk.

(Counsel complies with the Court's request.)

I will ask the Clerk to call the names one at a time of the first three who were not challenged by either side.

The Clerk: B. A. Black.

The Court: B. A. Black will be empaneled as the first alternate.

The Clerk: Max H. Jones.

The Court: Max H. Jones will be empaneled as the second alternate.

The Clerk: Burl H. Fann.

The Court: Burl H. Fann will be empaneled as the third alternate. The rest of you may be seated.

(Inaudible comment by second alternate juror to the bailiff.)

The Court: I will ask counsel to come to the bench, please?

(The following proceedings were held at the bench out of the hearing of the jurors.)

The Court: This man now comes forward and admits to bias. Why he hasn't done it previously, I don't know. He has had ample opportunity to do it, and I strongly suspect he doesn't want to serve on the jury.

Will you state what your bias is?

Juror (Jones): I have been in Houston about as long as Mr. Foreman, and numerous cases, criminal cases and stuff like that, I have disagreed with him, and I just—

Mr. Foreman: He hasn't been asked that question.

Juror Jones: I certainly haven't.

The Court (In open Court): The jury panel will leave the room, please. The entire panel. I will ask that those who are seated here will, when you come back, come back

and take the seats in which you are now seated, please. Those in the box will go to the jury room. I will ask that you all take your seats. The jury panel is excused, and you may speak from the counsel table.

Juror Jones: Do you want me to speak from there, sir?

The Court: Yes, sir.

Juror Jones: Where do you want me to sit, Judge?

The Court: You may speak from where you are. Has the entire jury panel left the courtroom?

(No response.)

Gentlemen, now that we have gone through a long process of qualifying the jury, a juror comes forward who has been selected as an alternate, Max H. Jones isn't it?

Juror Jones: That is right.

The Court: He now admits to bias and says that no question has been asked him before, but I asked the question if any of them knew of any reason why they could not sit as fair and impartial jurors in the trial of this case, and at that question Mr. Jones remained silent, but I will hear what you have to state now.

Juror Jones: I am sorry if I misunderstood what the question was. I am trying to keep from telling a lie up here.

The Court: You are admonished not to tell any lies.

Juror Jones: That is what I am talking about, but anything Mr. Foreman has to do with I would rather not have anything to do with because it is common knowl-

edge, and several people I go with know and have said, if you get in trouble, and you've got enough money, go see Percy. Percy is going to own you when you get through with it.

The Court: I don't want you to make a speech.

Juror Jones: I am telling you why under those circumstances, I don't think—

The Court: Why didn't you come forward earlier and state your disqualification? Why did you wait until you were called as an alternate juror?

Juror Jones: Let's see. The questions you asked, I was trying to remember them in my mind and see whether I was going to perjure myself or something, and I couldn't answer any of those questions just like I am trying to do now.

The Court: The Juror Max H. Jones is excused, the second alternate juror is excused for bias. You are excused.

Now, gentlemen, that leaves B. A. Black as first alternate juror, Burl H. Fann may move forward to second alternate juror, and we can call Marshall Green as the third alternate juror.

Mr. Wilkey: Your Honor, the Government has no objection to that if the defense does not.

Mr. Foreman: We have no objection, Your Honor. We think it is inevitable.

The Court: Very well. Will you call the jurors back, and they may take their seats.

(The following proceedings were held in the presence and hearing of the jury.)

The alternate juror Max H. Jones has been excused for cause, and that leaves B. A. Black as first alternate juror, Burl H. Fann as second alternate juror and Marshall Green is called and empaneled as third alternate juror.

To those of you whose names were not called, you are all finally excused and we thank you for your services. Your checks for reporting today will be mailed to you, and checks for mileage, if mileage is due, will likewise be mailed. You are all finally excused and we thank you, ladies and gentlemen.

The twelve jurors seated in the box and the three alternates will now stand and take the oath to try the case of the United States vs. George B. Parr and others.

(Whereupon the Clerk administered the oath.)

The Court: Be seated, please. It is now after four o'clock, gentlemen. We have spent a day in selecting the jury. I am going to excuse you all until tomorrow morning. I understand in the morning counsel will have some motions to present which shall be presented out of the hearing of the jury, so I am going to excuse the jury until ten o'clock tomorrow morning, and at that time you will come to the jury room and wait there until you are called.

Before you are excused today, I want to again instruct you, and these instructions will hold throughout this trial, that you will not discuss this case with anyone, you will not permit anyone to discuss it with you. If anyone attempts to discuss the case with you, you should attempt to ascertain who it is and report it to the Court, and even

though you are unable to ascertain who it is, you should nevertheless report it to the Court.

You have all indicated that you have no preconceived ideas about this case. You are instructed that what you learn about this case you should learn in this courtroom from the lips of witnesses, from competent testimony only. You are instructed not to read newspaper accounts about this trial during its pendancy. You are instructed to avoid getting any knowledge or information about the case in any manner except from competent testimony here in the courtroom. You are instructed that you shall not reach any conclusion regarding the case until you have heard all of the evidence and the argument of counsel, when you will then retire to the jury room to consider your verdict.

With those instructions, the jury is excused until ten o'clock tomorrow morning.

I will ask that the attorneys remain briefly.

(The following proceedings were held out of the presence and hearing of the jury:)

The Court: Is there anything further, gentlemen?

Mr. Wilkey: Not from the Government, Your Honor. What time would the Court like for us to be here tomorrow morning on the motion of the defendants.

The Court: Mr. Foreman is in conference. When he gets through—

Mr. Foreman: Pardon me, Your Honor.

The Court: What time would you like to present the motion in the morning?

Mr. Foreman: Whatever suits the Court.

The Court: I asked the jury to be here at ten o'clock, so I will hear the motion at 9:30. Anything further, gentlemen? If not, Court is adjourned until 9:30 tomorrow morning.

588 ORDER OVERRULING MOTIONS AND PLEAS OF DEFENDANTS TO DISMISS CERTAIN COUNTS OF INDICTMENT, PLEA OF RES JUDICATA, DOUBLE JEOPARDY, ETC.

(See p. 650)

588 MORNING SESSION—MARCH 19, 1957

(The following proceedings were held out of the presence and hearing of the jury.)

The Court: Be seated, please. I want to say to Mr. Oliveira that in deference to courtroom courtesy, you should not walk across the courtroom when the Court is being cried open. You should also rise when you are addressed. Will you arise please?

When the Court is being cried open, you should stand at attention where you are just as you would for the playing of the National Anthem, and so long as you are in attendance on the Court, we want you to observe the courtesies and customs of the Court.

Very well. You may be seated.

I will now hear the defendants' motion.

Mr. Sharpe: May it please the Court, yesterday afternoon it was my understanding that Judge Hannay entered the formal order of acquittal as to the four defendants which we have named in our motion, and that action had not been taken when we filed the motion yesterday, and I would like for the record to show that fact and ask the Court to consider that as a part of our motion. We have alleged the entry of the judgment of acquittal as well as the verdict of the jury itself.

The Court: Yes, sir.

Now, for the record, the judgment of acquittal filed by Judge Hannay yesterday had not been filed at the time you filed your motion, but it was filed before the jury was sworn and it was filed, of course, before the defendants had been called on to plead because up to this time they have not been called on to plead.

Mr. Sharpe: Yes, Your Honor, that is correct. If the Court please, the basic theory of the motion filed on behalf of these four defendants, that is O. P. Carrillo, Jesus Oliveira, Santiago Garcia, and the San Diego State Bank is that of res judicata, although we have also urged a plea of former jeopardy. I want to say to the Court in all frankness I did so only because of the peculiar way in which the 20th or conspiracy count of this indictment is drawn, particularly as it refers and adopts the first count of the indictment, and but for that fact I would not even urge the theory of double jeopardy on the Court, so at the outset I want to make it as clear as I can that our

basic argument is res judicata, although when we get through with res judicata the origin may be the same if the Court is in agreement with our theory.

The Court: I recognize that there is a difference.

Mr. Sharpe: Yes, sir. Yes, sir.

Yes, the courts have pointed it out in a number of instances.

If Your Honor please, I don't believe that there will be any serious contention on the part of the Government in this case that the principle of res judicata is inapplicable to criminal cases.

The Court: Well, I would not have to be convinced of that. I recognize that it is applicable to criminal cases.

Mr. Sharpe: And I don't want to waste the time of the Court at all in connection with the matter, but there is one case, Cosgrove, 224 Fed. 2d, at Page 146, which points out that the courts have not observed the distinction over a period of years, and that it should be in cases such as this, so passing from the expansion of that general point of the applicability of res judicata in criminal cases, this is our position in a nutshell, that the acquittal of the Defendants O. P. Carrillo and Jesus Oliveira on the first 19 counts of the indictment on the first trial of this case conclusively establishes every fact issue alleged in those 19 counts against the Government and in favor of those defendants, and that under the doctrine of res judicata, those issues cannot again be litigated in this or any subsequent criminal proceedings.

With the Court's permission, I would like to present the case of these two defendants, Carrillo and Oliveira first, because I think that to a great extent the position of the other two defendants, Garcia and the San Diego State Bank, depend upon our basic theory as to Carrillo and Oliveira. I want to point out, Your Honor, Count 20 or the conspiracy count of this indictment is very ineptly drawn. We pointed out that to Judge Hannay when we argued our motion to quash, and our motion was overruled, and I am not arguing that point, but it is important to note that without the first count of this indictment, the 20th count or conspiracy count would be fatally defective. It is a matter of elementary law that in alleging an offense under the mail fraud statute, basically a scheme and artifice to defraud must be alleged, and secondly some use of the mails in pursuance of the scheme, but when the Government alleges or the grand jury indictment comes to allege a conspiracy through violating the mail fraud statute, there is an additional element required. All cases hold it. I think the Weiss case, the Fifth Circuit, is the essential case. There is not the element of essential agreement on the part of the defendants to use the United States mails. In examining this indictment, Your Honor, the 20th or conspiracy count realleges that third essential element of agreement to use the mails only in these words.

"That the defendants did unlawfully, knowingly and feloniously combine, conspire, confederate, agree together, one with the other, and with persons to the grand jurors unknown, to commit the offenses against the laws of the United States which are fully described and set out in the first count of the indictment, that pursuant to said con-

spiracy, various overt acts were committed." Now that allegation by itself, Your Honor, does not comply with the requirement that the use of the mails be agreed upon, however, there were two allegations in the first count of the indictment which supplies that deficiency. The first one is contained in paragraph 16 (d) where it is alleged, that is on Page 4 of the indictment, Your Honor, wherein it is alleged—that is a subsection of Paragraph 16, which begins on Page 3—"It was further a part of said scheme and artifice to defraud . . . that the defendants would," and then pick up with subsection (d) "mail through the United States Mails tax statements, tax receipts and correspondence concerning taxes to taxpayers of the BISD and the receipt through the United States Mails of tax renditions, correspondence concerning taxes and checks in payment of taxes from taxpayers of the BISD," and the other allegations contained in Count 1 is found in the subsection pertaining to the use of the mails, subsection (r), wherein it is alleged that the United States Mails were used in transmitting the annual reports to the State Commissioner of Education, Austin, Texas, on Page 5. Those are the only allegations of the first counts specifically referring to any use of the mails.

The point boils down to this: The 20th or conspiracy count of this indictment is dependent on that element of agreement to use the mails on the part of the defendants on the first count of the indictment. Now, then, these defendants have been acquitted of that first count of the indictment, and under the D'Angelo case, 130 Fed. 2d, which I have cited in the memorandum brief, it is squarely held, an elementary law, that a plea of guilty of the de-

fendant puts in issue every material allegation contained in the indictment, so we have in this case, as far as the Defendants O. P. Carrillo and Jesus Oliveira are concerned, an allegation of use of the mails and agreement on use of the mails by the defendant which has been found favorable to them, and under the doctrine of res judicata, it is our position that that issue is no longer open to argument and the Government is precluded by it. There is an additional theory why the fact issues of the first count of the indictment preclude the Government on the 20th count of the indictment, and that is this, that the first count of the indictment at Paragraph 14 alleges that the defendants devised—that is on Page 3, Your Honor, of the indictment —"devised and intended to devise a scheme and artifice to defraud the BISD," and the other persons mentioned. The acquittal of the defendants upon that charge in effect said that if one of these defendants did not devise a scheme to defraud, and if one of these defendants did not devise a scheme to defraud in connection with all of the other defendants, and it says next that they did not intend to devise a scheme to defraud, it is again elementary in a conspiracy charge that there must be an agreement on a common purpose, there must be a concert of action and is a requisite element in that connection.

Here we have the fact issue that these defendants have been acquitted of, and an issue has been found favorable to them, that they did not intend to devise a scheme to defraud, so we say that the position is sound and it is supported by the cases, Your Honor.

We have one case, which is as close to a White Horse case as I believe could be found on this subject, and I have

cited it in the memorandum briefs. It is under the style of the United States vs Myerson, et al, but actually there were several sets of defendants, and the defendants contention of res judicata, which was upheld in that case, was on the part of the Defendant Katz. Now, if the Court please, in that case, the first indictment and first trial was based upon a mail fraud case. It was a mail fraud case and it was a conviction as to one Defendant Myerson. It was an acquittal as to the Defendant Katz, and a second indictment was brought against them and other persons for conspiracy to violate the National Bankruptcy Act, and the defendants each filed motions to quash. The motion of the Defendant Myerson was overruled. He was the one who had been convicted, but the motion of the Defendant Katz to quash was sustained, and it was sustained on the ground that the issues litigated and cited in the first trial of the case precluded the Government from proving them again in the second case, and that that proof was vital to the conspiracy although the first acquittal of Katz was on a directed verdict by the Court, and the Court had some comment to make on instructing the jury about the lack of knowledge of Katz. It is our position that we are in exactly the same situation here.

The jury findings in effect established that Mr. Carrillo and Mr. Oliveira had no knowledge of the scheme to defraud, did not intend to devise one, and, acting either alone or with the other defendants, did not devise one, so we say that the Myerson case and the Katz case is conclusive, and the Court said this in one sentence: "Katz participation in the scheme, whether it be called a scheme to defraud or a conspiracy, is no longer open to inquiry in any proceedings in the United States, nor can the effect of the

former adjudication of acquittal be avoided by adding new elements to the old scheme and thus broadening the charge of conspiracy." This case has been followed in many subsequent cases, and I think agree on all fours as in the present case. It cites the McConnell case, which I have included in the memorandum of authorities, which is reported at 10 Fed. Rep. 2d Series, at 977. In that case in granting a motion to quash, the District Court held that the fact issues litigated in a prior conspiracy case precluded the Government from re-proving them in a second conspiracy case, so there again where the Court could look to the indictment and determine that the issues were adjudicated in the prior case, that was done, and I would like to say this: There are several other cases in which we have variations and action taken by the Court. In some of them the Court says we can look at the indictment and I can see that these fact issues were adjudicated and if there is an essential fact established in the prior trial which is necessary for the Government to establish on the second trial, then I will quash the indictment. Then there were other cases, the D'Angelo case, which I have cited in the memorandum, at 138 Fed. 2d, 466, where the Court there held that the trial court had improperly precluded defense counsel from showing what fact issues had been adjudicated in the prior proceedings, and in that case the Court said, "We can look at the indictment. We can look at the Court's charge." The Court put a lot of weight on that part of it, that he could look at the Court's instructions in the first trial to determine what fact issues were actually presented, and in that connection we have had transcribed the charge of Judge Hannay in the first case, and I don't know whether Your Honor has had any opportunity to look at it or not, but I would like to

The Court: What is it you have?

Mr. Sharpe: The charge of Judge Hannay which was submitted to the jury in the first trial of this case, and the point I want to make in connection with it is that those cases all hold—they don't all, but some do—that if the Court cannot determine the fact issues which were litigated by examination of the indictment alone, then the trial court in the second case can look to the charge in the first case, and even holds the Court can look to the evidence and testimony of witnesses to determine what issues were litigated in the first trial. Our position here—I won't get into very much evidence. Basically, our position first is that the Court can look at the indictment and tell what type fact issues were adjudicated. Secondly, if it is necessary to go beyond the indictment, the Court can look at Judge Hannay's charge in the first case for more information. In that connection, I want to cite you a case which I don't have in the memorandum brief. The volume was out of place in Mr. Foreman's library. I had to borrow this from the Court's library. It is Cosgrove vs the United States, by the Ninth Circuit, decided June 18, 1954, reported in 224 Fed. Rep. 2d Series, 146. In that case, there was an acquittal on the conspiracy count, two conspiracy counts in the first trial, and the defendants were tried on six substantive counts in the second trial of the case involving the preparation of false estate tax returns and aiding and abetting in that connection. The two principal defendants were Cosgrove and Doyle, one being an Internal Revenue Department employee and the other an attorney. On the second trial of the case, these men were convicted of the substantive counts, and the Court in its

opinion here at Page 150, squarely hold this: "The issue of conspiracy, and that of aiding and abetting are so nearly identical as to give rise to the defense of res judicata in favor of Cosgrove," and later on the motion for rehearing, the Court held the same thing as to the Defendant Doyle, which simply means this: If the Court can look at the instructions given to the jury in the first trial of this case, and can see from that that these defendants were acquitted on the issues of aiding and abetting under the principal statute, then that is an additional reason why the Government cannot relitigate these issues for the purpose of showing the conspiracy into the 20th count, and Your Honor, I know what is in this charge and it is very easy to point out. The charge given by Judge Hannay under the principal statute. So without burdening the Court in the matter, we have these other cases where we have had actual acquittals of conspiracies as barring subsequent prosecution for a substantive offenses; an acquittal of substantive offenses where a conspiracy was charged first; an acquittal of a substantive offense where a substantive count was tried first, and practically every available, every variation known, and the courts have consistently held if it is clear a fact issue was decided favorable to the defendants, it cannot be relitigated on the subsequent trial.

Further on the 20th Count, as far as Carrillo and Oliveira are concerned, I recognize the difference that they are not the same offenses, the Court has repeatedly held so, but we have cited to you a case in the memorandum, the Henry case, in which the Judge said in that particular case that the allegations amounted to the same thing, that where the indictment alleges a scheme to defraud devised

by two or more defendants, it is a conspiracy case, and during the trial of this last case, the Government, in connection with some rulings on evidence, actually submitted to the trial court memorandum authorities of that same effect, that the rules in a conspiracy case were applicable because of the nature of the offense being charged against these defendants. Then if Your Honor will examine the 20th count of the indictment, we will first see that the issue of agreement on the part of the defendants has been established favorably to them. Now, secondly, the first paragraph of the 20th count, under overt acts reads:

"Each of the overt acts alleged in the preceding 19 counts of this indictment, in the respective dates and places alleged therein."

Your Honor, those issues have been adjudicated, every single one of them has been adjudicated favorably to these defendants, and we say regardless of what over-all action the Court may take in connection with those motions that the Government should not be allowed to relitigate those issues contained in Paragraph 1. When you examine Paragraphs 2, 3, 4, 5 and 6, we will see that although those exact allegations were not in the first count of the indictment, those broad allegations as to use of the mails which I have cited through subdivisions (d) and (r), Paragraph 16, effectively preclude proof of these overt acts.

The Court: Are you still on the motion for Carrillo, O. P. Carrillo and Oliveira?

Mr. Sharpe: Yes, sir.

The Court: I understand your motion, and we have used up 25 minutes. Now, can you state to the Court your motion as to the other two defendants?

Mr. Sharpe: Yes, Your Honor, it is this:

Since they were acquitted in one case, as I recall it, of ten counts and the other of eleven counts in the indictment, the issue of devising or intending to devise a scheme to defraud has been found in favor of the bank and Mr. Garcia. Your Honor will recall that each of the counts, 2 through 19, in the first paragraph simply adopted by reference the allegation of the first count except the last paragraph of it, so here we have the situation that the defendants have been acquitted, just as Carrillo and Oliveira, of making an agreement. That is basically our position and all that would be left of the counts upon which the defendants were not acquitted would be the last paragraph which alleges the mailing or the receipt or causing to be mailed of a letter. Insofar as the 20th count of the indictment is concerned as to Garcia and the bank, we can see that some of the overt acts are left as to them because they weren't acquitted of them, but we do say they were effectively acquitted of any use of the mails for the same reason we have given for Carrillo and Oliveira, and that, substantially, Your Honor, is our position.

The Court: Yes. Thank you. Also don't you have a motion as to all defendants?

Mr. Sharpe: Your Honor, I do not have one at this time.

The Court: Oh, yes. Excuse me. I stand corrected.

Mr. Sharpe: I would like to state this in connection with the Court's question, depending of course on the ruling, that is the Government does attempt to relitigate any of these issues as to the defendants who have been acquitted, the other defendants would be in a position to object that

it would prejudice their case for the Government to relitigate those cases.

The Court: How much time will the United States Attorney want? I notice you have quite a line of books all with markers. If you did no more than read from all of those books, it would take quite a period of time.

Mr. Wilkey: I would like to ask the same amount of time as Mr. Sharpe. I would like to point out, where these men have had an opportunity to prepare a written brief, it was not until last night after supper I could sit down and read the brief. I have the law here.

The Court: I see you have. Let me say this. You mentioned you have not had time to prepare a written brief. It is the intention of the Court to defer ruling on this motion until the Government has had time to prepare a brief, and I don't think I am called upon to rule at this time. I think I can rule at any time during the trial, or I can rule at any time before the case is submitted to the jury.

How much time will the Government want to prepare a brief?

Mr. Wilkey: Our first opportunity to get to it with any consecutive time would be this week end. I understand Your Honor has other commitments, a three-judge court for Friday, and therefore this Court will not be in session on Friday.

The Court: Yes. I will make no announcement now. We will not be in trial in this Court on Friday because I am to sit on a three-judge court Friday, which will take up that day.

Mr. Wilkey: If Your Honor is going to defer ruling until you have seen the Government brief, we would like until next Monday to prepare the brief, and in that view, since the ruling would be deferred, we would waive argument at this time until we have had time to put the law we have into the brief.

The Court: Very well. I think I understand the motions, and what I want to do is understand the law before I rule.

Mr. Sharpe: May it please the Court, the suggestion is we have a purpose in interposing objections as to evidence that would not be—if the Court's ruling is in conformity with our position—

The Court: I think I know the law, and I will overrule the motions now. It is now ten o'clock.

Yes, sir?

Mr. Sharpe: If the Court please, may the record show, in the absence of the jury here, that the objections that we have made and the motions will carry forward in connection with the arraignment of these defendants on any of these matters in connection with which they have been acquitted?

The Court: Sir?

Mr. Sharpe: We simply want to carry forward our objections made and the motion to the arraignment of these defendants who have been acquitted in connection with any overt act that is involved.

The Court: Very well, sir.

It is now ten o'clock, and the Court will take a 20-minute recess at this time. I have been working since 8:30.

and will you, Mr. Anderson, advise the jury that we are standing at recess until 10:20, and at that time I want the jury in the box. We will be ready for them at that time.

I will say this. When the indictment is read, I will instruct that when the United States Attorney reads Count 1 he omit the reading of the names of Jesus Oliveira and O. P. Carrillo. He will omit those names in the reading of Count 1, and in Counts 2 through 19, referring back to those counts, and of course all names appearing in Count 20 and all names may be read to the jury on the reading of Count 20.

Mr. Wilkey: Thank you, Your Honor. That was the practice we followed last week.

Mr. Foreman: I think I understood the Court that those names will be omitted in 19 counts and only read in Count 20?

The Court: Well, their names do not appear in Counts 2 through 19. They would be included only by reference back to Count 1, so I will instruct that when the United States Attorney reads the indictment, that in the reading of Count 1 he omit the reading of Jesus Oliveira and O. P. Carrillo.

Mr. Foreman: We want to reserve the same objection with reference to Count 20 as to their names also in view of their acquittal of those other 19 counts.

The Court: That objection will be overruled, and all names will be read in the reading of the Count 20, and Court will recess for 20 minutes.

(Short recess.)

(The following proceedings were held in the presence and hearing of the jury.)

The Court: The indictment will be read aloud by the United States Attorney for the benefit of the defendants, the jury, and the Court.

(Thereupon the indictment was read, to which all defendants plead not guilty.)

The Court: The Government may call its first witness.

Mr. Bottler: Your Honor, may we ask for a brief recess of about three minutes?

The Court: Very well. Court will recess about five minutes.

(Short recess.)

(The following proceedings were held out of the presence and hearing of the jury.)

Mr. Bottler: Your Honor, may we approach the bench?

The Court: Why do you want to approach the bench? There is no jury present.

Mr. Bottler: We think that the Court should be advised of these circumstances first at the bench and later on—

The Court: Very well.

(The following proceedings were held at the bench.)

Mr. Wilkey: We were just informed at the recess that the Juror Richard C. Cox is probably disqualified by reason of two prior convictions for which he was given two years and three years to serve but the actual serving was paroled. At this time in our own minds, we have no doubt as to the identity of the juror. We ask that the jury be excused until about 2:30 in order that we may develop the facts by fingerprint records, et cetera, to present to the Court to remove any shadow of a doubt.

The Court: Why couldn't Richard Cox be called in and questioned?

Mr. Foreman: Why certainly. There is no use going around the back door.

Mr. Wilkey: I think it would be all right for the Court to call him in, either to chambers—

Mr. Foreman: Is he on the jury as an alternate?

Mr. Wilkey: There is a Richard Cox on the jury. He is the man sitting in the No. 6 seat. He would be third from the wall, counting the alternate.

Mr. Foreman: White or colored?

Mr. Wilkey: He is white. Do you care to make a suggestion?

Mr. Foreman: Was it in this county he was supposed to have been convicted?

Mr. Wilkey: No, he was convicted in Jefferson City, Missouri for larceny of automobile. He was convicted

in St. Louis, Missouri for auto theft. In the first, he got three years, and was paroled. In the second count, two years, and was paroled, is our information. We are checking by long distance telephone now.

Mr. Foreman: Was he asked if he had ever lived in those states? I don't recall.

Mr. Wilkey: No, no question about that.

The Court: No, he was asked, the entire panel was asked if any of them had ever been convicted of a felony, and the Court made a detailed explanation of what a felony was. Several of them spoke up and stated that they had been convicted of felonies, and those that had been convicted of felonies were excused.

Mr. Wilkey: For the further information of the Court, it in itself does not constitute a disqualification except that the man has failed to answer perhaps the question. The man has a known criminal record here in Houston. He is recognizable by those who know the criminal element of Houston. As a matter of fact, one of the Federal agents happened to be in the courtroom and recognized him on the jury panel.

The Court: This morning?

Mr. Wilkey: Yes. That is the identification just made, so—

Mr. Foreman: Well, I didn't recognize him, Your Honor.

The Court: You are pretty well acquainted in the criminal element of Houston?

Mr. Foreman: I think I ought to know it better than the FBI agent.

The Court: I think we should follow the direct approach and interrogate him.

Mr. Foreman: Has he a fingerprint record in Houston?

Mr. Wilkey: We are seeking that.

The Court: Is there any objection to interrogating the man in open court?

Mr. Foreman: Judge, I don't have any objection.

Mr. Wilkey: We suggest it be done at the bench.

The Court: If it is going to be done privately, I would rather go to chambers and do it. I know there would be no objection to that.

Mr. Foreman: No, your Honor.

The Court: I suggest we retire to chambers.

When I say we, I mean the Court, the reporter, the clerk, and counsel on both sides.

Mr. Wilkey: Yes, Your Honor.

The Court: Is there any objection to that procedure?

Mr. Foreman: None whatsoever. I think it is proper, and request it.

The Court: And I will then send for the Juror Cox. Very well. We will promptly retire to my chambers.

Court will stand at recess.

(The following proceedings transpired in chambers, out of the presence and hearing of the jury.)

The Court: Are you Richard Cox?

Juror Cox: Yes, sir.

The Court: Are you also known as Richard C. Cox?

Juror: Richard Carl Cox.

The Court: We have some information about a Richard C. Cox and it may or may not be you. We wanted to ask you if you have been convicted of felonies in Missouri? Is that you?

Juror Cox: That is me, but I have never been convicted. I have never served any time.

The Court: Weren't you given a three-year suspended sentence for larceny of automobile in Missouri?

Juror Cox: No, sir. I was paroled to my daddy. I never served any time.

The Court: Well, now, I didn't say you served any time.

Juror Cox: I never answered any parole or anything. I was given probation to my daddy.

The Court: You didn't have a suspended sentence?

Juror Cox: Not that I know of. I think I was 15 at the time. 1931.

The Court: And how about—that was in Jefferson City, wasn't it?

Juror Cox: Jefferson City, Missouri.

The Court: And in St. Louis weren't you convicted on another case of auto theft?

Juror Cox: Never went to trial. Never went before a judge.

The Court: Listen to me. I don't want you to talk at the same time I am talking. I haven't finished. We have information that you were sentenced to two years in St. Louis likewise. It was paroled?

Juror Cox: Are you asking me now?

The Court: Yes.

Juror Cox: I never went to court in St. Louis.

The Court: Well, what is the information of the United States Attorney?

Mr. Wilkey: Our information is that he was given those sentences. We have it on the regular FBI fingerprint report.

The Court: What do you recommend?

Mr. Wilkey: I recommend that we be given time until about 2:30 this afternoon to establish this. I think that the Juror Cox should be warned that his statement here denying them if disproved might be grounds for proceeding in contempt of Court.

The Court: Well, I don't know about that.

Juror Cox: I have been picked up several times in minor cases.

The Court: You haven't been called on. I don't want you to interrupt. We will give you an opportunity to talk. You may proceed, Mr. Wilkey.

Mr. Wilkey: Since he denies the sentencing, I think we should await the proof from Missouri as to whether the sentence was given or not. Our record shows that he was given each of those sentences.

The Court: All right. He said he was 15 years old. Suppose under the Juvenile Statute which is not a conviction of a felony—when I say ours, I do not mean Texas, I mean Federal.

Mr. Wilkey: We have considered that and the test under Title 28, Section 1861, is it is not a test of felony or misdemeanor but whether or not the man could have received more than one year, and from our information he not only could have but did receive more than one year.

The Court: Under our Federal Juvenile Statute it says one may be imprisoned during his minority. If you have a 15-year-old minor, he may be imprisoned from the age of 15 to 21 which would be six years, but as I understand it is not considered a felony conviction.

Mr. Wilkey: It doesn't matter whether it is a felony conviction. It is the question of the imprisonment and he could have been, under the statute and our information was he was.

The Court: No, last Friday I convicted two juveniles, age 15 and 17, under the Juvenile Delinquency Act, and I understood that that is not to be considered a felony conviction.

Mr. Wilkey: That is because the Federal law so provides.

The Court: Well, they could have been imprisoned by me until they were 21, which would have been four years in the case of one and six years in the case of the other.

Mr. Wilkey: Your Honor, I am not sure but what under the Federal law even if it says it is not to be considered a felony conviction, I don't know how that would

affect Section 1861 which does not go on felony or misdemeanor but on the term of imprisonment.

Juror Cox: I didn't return this (indicating) at all.

The Court: Who did you give this to?

Juror Cox: All of us had these in the jury room. No one asked for this.

The Court: I don't want you to interrupt me. Answer this: All members of the jury were sworn to give true answers to question. I instructed you that failure to speak up when you should speak up would be considered an answer. Do you recall that?

Juror Cox: Yes, sir, I do.

The Court: I then advised the entire jury panel that I would ask if any of them had ever been convicted of a felony. I said before, I will call on you to answer that question, I will explain to you what a felony is. Then I explained that a felony was any offense that was punishable by imprisonment for more than one year. I went ahead and further explained that it did not necessarily mean that you were in prison for one year, but it meant an offense in which imprisonment for more than one year was authorized; that, in fact, one convicted of a felony may be fined only or that he may have actually been in prison for a term of less than one year or he may not have been imprisoned at all, but if it is an offense which carries a maximum penalty of more than one year, it was a felony. Do you remember that explanation?

Juror Cox: I believe I do, word-for-word.

The Court: Then I asked the question, have any of you ever been convicted of a felony, and if you will remember, several stood up and stated that they had been convicted of a felony and do you remember each of those persons was excused? Now, you were called on then to answer. Why didn't you answer?

Juror Cox: They had all served time in the penitentiary.

The Court: That doesn't get back to my question. Didn't you understand? You said you undersood I explained it did not mean whether they had served. It meant if the offense was punishable by imprisonment for more than one year.

Juror Cox: I guess I didn't get it all that way.

The Court: I want to say this, that I think this man was under an obligation. He had certainly been instructed what a felony was, and if this man has failed to speak up when he should have spoken up and if he has impeded justice in the way he might do by his failure to act, some action should be taken whether by criminal prosecution or contempt proceedings. Now, the Government has stated you want some additional time to look into the matter. How much time will you want?

Mr. Wilkey: At this time we would suggest 3:30. We will try to get the definitive information by that time. It may be that we will have to excuse the jury until tomorrow morning pending the outcome of this. I might say that, in addition to these two that appear on the face of the record that serve as being disqualifying, there was one other that we would want to check which may be a disqualification.

The Court: I think you should also look into the matter of whether this man, being a juvenile at the time, if the law of Missouri considers juveniles as felonies.

Mr. Foreman: They do not in Texas, and furthermore it is forbidden ever to refer to them in court as a conviction, and a man is entitled to swear in Texas, if he was convicted as a juvenile, that he has never been convicted of a felony. I don't know what the law in Missouri is.

The Court: I am not going into the law of Missouri, but I believe this man, yesterday, was under obligation to speak up, from instruction of the Court. The Court carefully instructed everyone they were under obligation to speak up, and even if they were in any doubt they should speak up, and quite a number did, but this man remained silent, and I think, to say the very least, he is in contempt of Court.

Mr. Foreman: May it please the Court, we have the date of the first conviction in 1931, but we do not have the date of the alleged conviction in St. Louis. Does the record of the FBI show the date of that?

Mr. Wilkey: I believe it does. I didn't have it on that note I gave the judge.

Juror Cox: May I speak a minute? They have brought that up every time I have been arrested on a minor arrest, and I have always absolutely denied it. I have never been to court in my life on that, but it has always been tagged on my record. If you look into it and find out what judge and so forth, I would like to know it. When I was 15, my daddy and the judge took care of it. I was scared to death. It was cut and dried.

The Court: I don't want counsel for either side to offer to advise this man because you are here as representing other people, both of you.

Mr. Wilkey: Your Honor, I would suggest, while the juror is here, inquiry be made if he has any other convictions of any kind whatsoever besides the two mentioned. I'm not speaking of pick-ups. I am speaking of conviction.

Juror Cox: I was sentenced to 60 days in the county jail when they made me paint the city jail, and that is the only time I have ever served.

The Court: The county jail where?

Juror Cox: Independence, Kansas.

The Court: How long ago?

Juror Cox: Seven or eight years ago—nine years ago, right after the war.

The Court: For what offense?

Juror Cox: Disturbing the peace and drunk.

The Court: I don't think that's a felony. Of course, I don't know what it is in Kansas.

Juror Cox: They had me paint the city jail, and told me as soon as I painted it they would let me out.

Mr. Wilkey: May I ask if there were any others?

Juror Cox: I have been picked up all over the country, but no convictions whatsoever.

Mr. Wilkey: Any suspended sentences?

Juror Cox: No, sir, and I told the army about that in

Jefferson City, and they didn't treat it as a felony when I volunteered up. I signed up myself.

Mr. Wilkey: Again, the test of the statute on which we must go is one year. If he could have received one year.

The Court: How about those juveniles I tried Friday afternoon? I found them—

Mr. Wilkey: I think we have here two Federal statutes that may be either construable, or have been construed to get it, so that that rules that out in that case.

The Court: I could have imprisoned them during their minority, and I can still imprison them during their minority if they violate their paroles, for several years.

Mr. Foreman: Your Honor, there is a—there are some cases, which your statement suggested to me, a distinction in our law between a life sentence and a term of years under which the mere fact that a man might live longer than two years, he might also die sooner than two years, so that our indeterminate sentence law does not apply on a life sentence because it is required to have a determined number of years. I don't think that would any more than just touch on the fringes of the thought you are suggesting, and when I spoke a while ago, I was not undertaking to advise this man, but advise the court on our law as a suggestion in briefing the Missouri law.

The Court: I want to give as much time as this requires. Do you think—what will you have to have from Missouri to satisfy yourself about this man's qualification?

Mr. Wilkey: Either telephonic or airmail extract of the court records and the fingerprint reports. He has admitted one of those offenses in Missouri. That takes care

of the identity there but he had denied the second offense, so we would have to—

The Court: Well, how long would it take to get that?

Mr. Wilkey: The fingerprint reports, all we could do today would be advise the Court what we have been advised telephonically, but tomorrow we could get the master fingerprint report from Washington which would have on it there the record from Missouri.

The Court: I don't think we will need Mr. Cox any more?

Mr. Wilkey: I don't think so.

The Court: Before you are excused, I want to give you some instructions, and I don't want these instructions violated. I want to get it clearly on the record, and I want the record to show the juror, Richard Cox, is listening. Are you listening?

Juror Cox: Yes, sir.

The Court: When you go back to the jury room you are not to say anything to anybody of what transpired up here. You are not to say what transpired here to any newspaper reporter, not to any fellow juror, and when I mention reporters and fellow jurors, I am not excluding anybody. You are not to mention this to anybody. You are not to mention it to your wife.

Juror Cox: I won't tell anybody.

The Court: Will you ask Mr. Gerrard to come in?

Juror Cox: When do you want to see me?

The Court: I just want you to go back to the jury room now.

Mr. Gerrard, take Mr. Cox back to the jury room.

(The juror, Mr. Richard Cox, was thereupon excused and left the room.)

Mr. Foreman: If there is any chance of their not being able to, I am having a whole lot of trouble out of Mr. W. B. Gunn who as a client of mine is in Methodist Hospital. I just heard them whispering they wish they would be ready at 2:30. I don't think he can be ready with what he wants at 3:30.

The Court: I don't either. Do you think you would be ready tomorrow morning?

Mr. Wilkey: Yes, I think we can.

The Court: Do you think Missouri can send his fingerprints down here and have them here in the morning?

Mr. Wilkey: I think so. They are working on them now.

The Court: All right. Suppose we go back, and I will excuse the jury until ten o'clock tomorrow morning.

Mr. Wilkey: All right.

Mr. Foreman: We shall accept as the Court's admonition to this man as to us also.

The Court: I am glad you did, I don't want anyone to discuss this. I don't want it to get in the newspapers.

Mr. Wilkey: We have already declined to make any statement at all, about any statement to the newspapers.

Mr. Foreman: I'm sorry, but I told all eleven of my clients while we were coming up here. I told them it looked like another mistrial.

The Court: Will you tell them we don't want them to discuss it either.

Mr. Sharpe: I have a personal situation I would like to call your attention to. I am president of our school board at Brownsville, and we were supposed to have a meeting tonight, and If I can get on the Eastern plane this afternoon, I would like to do that and come back on the Trans-Texas that gets back at 8:30 or 9:00 o'clock in the morning.

The Court: Will your clients and co-counsel excuse you?

Mr. Foreman: Yes, sir.

The Court: You have the Court's permission.

Mr. Sharpe: All right, sir.

The Court: I suggest we go down now, and I'm going to excuse the jury.

(The following proceedings were held in the courtroom in the presence and hearing of the jury.)

The Court: Be seated, please. The jury is again reminded of the instructions previously given, and the jury is excused until ten o'clock tomorrow morning.

Court will stand adjourned.

ORDER GRANTING MISTRIAL

(see p. 581)

626 MORNING SESSION—MARCH 20, 1957

(The following proceedings were held out of the presence and hearing of the jury.)

The Court: The Court was adjourned yesterday early, until this morning, for the purpose of allowing time to investigate the question of the possible disqualification of one of the jurors selected in the case of the United States vs George B. Parr, et al. Some investigation has been made. I have some documentary evidence in my possession, and I think it is in order that we go forward with that investigation in open court, and I will ask the juror Richard Cox be called to the courtroom.

(Thereupon Juror Richard Cox appeared before the Court.)

The Court: Take your seat in the jury box, please, Mr. Cox.

I will state now that it was called to the attention of the Court yesterday of the possible disqualification of the Juror Richard Cox, and you will recall that at the time we qualified the jury panel on Monday morning, a number of questions were asked of the jury panel. They were first sworn to give true answers to questions. They were cautioned that failure to speak up when they should speak up would be construed an answer. Referring now to the stenographer's transcript of those proceedings, then I came to an important qualifying question, and I stated then in open court, the next question, "Have you ever been

convicted of a felony from which you have not received a full pardon." Then I went forward and explained, "So that each of you may properly answer this question, I will explain to you what a felony is. A felony is considered to be the greater degree of crime. We have felonies, which are the greater degree of crimes, and misdemeanors, which are the lesser degree of crimes. That test is if you have been convicted of a crime or offense for which the authorized maximum penalty would include imprisonment for more than one year. Then that is a felony. It may include imprisonment, or a fine, whereupon conviction of a felony one may be fined only, or one may be imprisoned for less than a year, but the test is if the authorized maximum penalty is more than one year, then it is a felony. Bearing in mind that explanation, I will ask, have you ever been convicted of a felony from which you have not received a full pardon? Is there anyone who would answer the question yes?"

At that time three of the jury panel arose and stated that they had been convicted of felony. The Court ruled that they were not qualified jurors, and they were excused. Then, following the questions qualifying the jury panel, the panel, including Richard Cox, were sworn to serve as jurors. Then, a 30-minute recess was declared to allow time in which to jostle the names on the list and prepare a new list on which we could select a jury to try the Parr case.

During that intermission, one other juror came to the Court privately and advised the Court, that he didn't want to stand up in the presence of several of his friends and admit that he had been convicted of bank robber, but he advised me he had been convicted of bank rob-

bery, and he was excused from the panel. However, the Juror Richard Cox at no time rose to offer any information.

It is my opinion that from the information I have, he should have risen. He did not, contrary to the instructions of the Court, but we are now here to consider whether he is a competent and qualified juror, and whether we should proceed with him as a juror in this case.

The United States Attorney sent for and obtained and delivered to me an exemplified copy of the judgment of the Circuit Court of Cole County, Missouri, styled the State of Missouri vs Richard Cox and Phillip Foss, and I will now read it in full, but it appears that Richard Cox and Phillip Foss were both convicted of automobile theft. They were both juveniles, that they were sentenced to the Missouri Reformatory at Booneville, Missouri, for a term of three years, to remain until discharged.

I want this exemplified copy identified as an exhibit, not in the case against George Parr and others, but simply as an exhibit into the Court's inquiry into the qualification of the juror. I will ask that it be marked Exhibit J-1, and any other exhibits will be J-1, J-2, J-3, J-4, indicating jury inquiry.

My further information is that Mr. Richard Cox was not delivered to the Missouri Reformatory at Booneville, Missouri, although he received a sentence of three years; that he was paroled to his father. Now, the Juror Richard Cox is in the courtroom, and I will ask you, Mr. Cox, if you are the person who was convicted in Circuit Court of Cole County, Missouri as identified by exemplified copy of the judgment identified as Exhibit J-1? I will ask the Clerk to hand it to you.

Juror Cox: I believe that states it as fair as it possibly can be.

The Court: What is it?

Juror Cox: I think that states the whole thing correctly.

The Court: Are you—

Juror Cox: I am Richard Cox.

The Court: You are the Richard Cox who was convicted in Missouri at that time?

Juror Cox: Yes, sir.

The Court: Very well, thank you.

Now, I think a broader inquiry should be made. We are now inquiring into the qualification of this man to serve as a juror. Under the qualification, the Federal statute on the qualification of jurors appearing in the United States Code, Title 28, Section 1861, Qualification. Any citizen of the United States who has obtained the age of 21 years, and resides within the judicial district, is competent to serve as a grand or petit juror unless, and there are four requirements set out. One is, unless he has been convicted in a State or Federal Court of record of a crime punishable by imprisonment of more than one year, and his civil rights have not been restored by pardon or amnesty.

This Court takes judicial notice that the Circuit Court of Cole County, Missouri is a Court of record of the State of Missouri.

Then, under 4, Qualification 4—Qualification 3, unless he is incapable—no, Qualification 4. Unless he is incompetent to serve as a grand or petit juror by the laws of the state in which the District Court is held. So that

provides a requirement that all jurors in Federal Court shall qualify with the requirements of the State of Texas, which are set out in Article 2133 of the Revised Civil Statutes of Texas, which provides that all men over 21 years of age are competent jurors. I will now say that by constitutional amendment, the word men shall include women.

Unless disqualified under some provision of this chapter, no man shall be qualified to serve as a juror who does not possess the following qualifications, and there are seven qualifications, numbered 1 through 7. No. 3: He must be of sound mind and good moral character. It has been raised in the mind of the Court, which I think is material to this trial, questions relating to the good moral character of the Juror Richard Cox. From information in my possession, which I will ask that the Clerk identify as Exhibit J-2. Exhibit J-2 is an information sheet of the United States Department of Justice, Federal Bureau of Investigation, which shows a long arrest record of Richard Cox identified by fingerprints.

That shows arrest in Memphis, Tennessee, February 19, 1932, the Police Department of Memphis, Tennessee.

The Police Department of Jefferson City, Missouri, February, 1932, charged stealing auto.

Police Department, Wichita, Kansas, April 18, 1934, charged sleeper, released. I don't know what a sleeper is.

Police Department, St. Louis, Missouri, Richard Cox; June 8, 1934, larceny of auto. Disposition, released.

Sheriff's office, Clayton, Missouri, Richard Carl Cox, September 9, 1939, burglary, larceny. Disposition, warrant issued.

Police Department, Nevada, Missouri, Richard Carl Cox, May 14, 1940, investigation for riding in a mail car. No disposition shown.

Police Department, Syracuse, N. Y., Richard Carl Cox, November 20, 1942, rape, second degree. No disposition shown.

Police Department, St. Louis, Missouri, Richard Cox, February 28, 1946, investigation.

Police Department, Coffeyville, Kansas, Richard Carl Cox, April 7, 1946, drunk and assault. Fined $15 in police court April 8, 1946.

Police Department, Coffeeville, Kansas, Richard Cox, April 6, 1947, common drunk. Fined $10.

Police Department, Coffeyville, Kansas, Richard Carl Cox, July 24, 1949, charged C. D., which I assume is common drunk. Fined $10.

Police Department, Coffeyville, Kansas, Richard Carl Cox, August 12, 1949, and a number of abbreviations, the first d-r-k., which I assume to be drunk, disturbing the peace. A-n-v., which I do not understand. Fined $10.

Police Department, Coffeyville, Kansas, Richard Carl Cox, October 6, 1949, disturbing the peace, 60 days in jail.

Police Department, Houston, Texas, December 6, 1954, investigation.

Mr. Cox, are those various reports your record?

Juror Cox: That is right.

The Court: I have an information sheet from the Police Department, Bureau of Criminal Identification,

Houston, Texas, which shows a number of arrests in Houston, Texas, by the Houston police, which I will not read in full. I first want this identified as Exhibit J-3. I will state that I will not read it in full because the full reading would involve other persons, but I do want it entirely in the record. I will read the record of arrests: March 12, 1955, September 23, 1955, March 8, 1956, September 13, 1956, December 11, 1956, December 12, 1956, January 11, 1957, and I will ask if this is your arrest record, Mr. Cox?

Juror Cox: I think so, but I have only paid a $1 fine down here in the City of Houston.

The Court: Very well.

Telegraphic reports from SAC, Albany. What is SAC?

Mr. Wilkey: Special Agent in Charge, FBI, Albany.

The Court: To Special Agent in Charge in Houston from Special Agent in Charge, Albany, New York, George B. Parr Mail Fraud Jury Panel Investigation. Instant date. Record Syracuse, New York, Police Department reflects Richard Carl Cox arrested Syracuse, New York, November 20, 1942, on charge of rape, second degree. Cox at time member of U. S. Armed Station, Syracuse, N. Y. base. Cox met one, I am omitting the name, age 15, of Syracuse and repeatedly had intercourse with her about a dozen times. Blank and her parents complained to Syracuse police. Cox admitted offense in affidavit to Syracuse police and was held for grand jury on January 6, 1943. No bill returned by grand jury and Cox released.

Is this your record, Mr. Cox?

Juror Cox: That is right.

The Court: I would like to have this identified as Exhibit J-4. Also, I want to have this identified as Exhibit J-5, the telegraphic report.

Mr. Wilkey: Your Honor, I believe those are the original teletypes of the FBI agents in Houston; would the Court substitute copies of those?

The Court: We will come to that.

Mr. Wilkey: Thank you.

The Court: Reading Exhibit J-5, to Special Agent in Charge, Houston, Texas, from Special Agent in Charge, Kansas City, Missouri, George B. Parr, Jury Panel Investigation, Houston, Texas. Instant date. Police Department Coffeyville, Kansas, advise arrest records this department reflect Richard Carl Cox, FBI 616596, arrested common drunk April 7, 1946 and fined $15 under Section 3, City Ordinance.

M4086, fined $10 each on April 7, 1946 and July 25, 1949, under the same ordinance. Common drunk. Maximum penalty $130 and 30 days.

Arrest August 12, 1949, for drunk, disturbing the peace, and assault and battery. M-u-n-d-e-r, which I think is a misspelling for number, City Ordinance 58 and 664, and fined $20. Maximum penalty $100.

Arrested May 2, 1950, charged with A&B—I understand that is assault and battery—under Ordinance M664, for striking Pearl Bettecole, and dismissed by complaining witness.

Arrested September 23, 1950, charged with assault and battery under same ordinance for striking B. G. Spencer and dismissed by complaining witness.

Arrested August 22, 1949 for fighting in tavern and arrested by former Chief of Police, Pete Phillips. Cox escaped from police car but voluntarily surrendered on August 23, 1949, and released on bond same date. Sentenced to 60 days August 30, 1949, and paroled September 13, 1949, on balance of sentence after he painted the jail.

Arrested October 6, 1949, under Ordinance 58 for disturbing the peace in attempting to enter a woman's apartment. Sentenced 60 days and paroled.

No felony conviction listed at Coffeyville Police Department and I will ask if this is a correct statement of your record in Coffeyville?

Juror Cox :Yes, sir.

The Court: Likewise I want this exhibit identified Exhibit J-6, and an identification photograph of the Juror Richard Cox as Exhibit J-7. Those will not be read .

From the evidence before the Court, it is the opinion of the Court that Richard Cox is not a qualified juror. I will as counsel for both sides if either of you have any contrary opinion?

Mr. Foreman: Do you want us to express an opinion? We have none.

The Court: I ask you if you have a contrary opinion?

Mr. Foreman: No, sir.

The Court: And the Government?

Mr. Wilkey: No, Your Honor.

The Court: The Juror Richard Cox is charged to be an incompetent juror, a person not qualified to sit as a

juror in this Court, and he is discharged as a juror in the case of the United States vs George B. Parr, et al.

I want to call to the attention of the United States Attorney that in view of the specific and what I consider painstaking efforts of the Court to explain to all members of the jury panel that they should give true answers to questions which they were sworn to do, it was explained to them that failure to speak up when they should speak up would be construed as an answer. That Court gave what is considered to be a painstaking explanation of what is a felony, to which this juror failed to answer that he had ever been convicted of a felony. It was explained that anything punishable by more than one year is a felony, and he was sentenced by a Missouri Court for three years, which was paroled, but nevertheless is a conviction.

I want to point out that three men did rise and state that they had—did rise in open court and state that they had been convicted of felonies, and in each instance the Court ruled that they were not qualified jurors and dismissed them. That should have been an example to the Juror Richard Cox to also stand up and relate to the Court that he had been convicted, or if there were any doubts in his mind about it. I will also state, as I stated earlier, that following that session another juror, who did not stand up, came to me and told me privately he had been convicted of bank robbery, but the Juror Richard Cox not only failed to answer the question, but he failed to come advise the Court privately or otherwise. He sat quietly by and failed to disclose any information about himself when called on to do so. He allowed himself to be selected as a juror in this case, and I am suggesting that the United States Attorney should look into the matter

to see if the Juror Richard Cox should not be proceeded against, either by criminal prosecution or contempt proceedings.

My earlier conclusion that he is an unqualified juror is based on two premises: One, that he has been convicted of a crime for which he was sentenced to three years in the State of Missouri, and paroled to his father, and is further based on the premise that he is a person not of good moral character. The qualification of a juror in this State and in this Court require that jurors be persons of sound mind and good moral character. As stated earlier, the witness Cox is discharged.

You may leave, Mr. Cox.

(Thereupon the Juror Cox retired from the courtroom.)

I will review that when the jury was empaneled, we empaneled three alternate jurors. It is the opinion of the Court that the first alternate juror should replace the Juror Cox, and I want to ask the opinion of counsel, and I want to relate that there is a possibility that what has transpired here may have prejudiced the case both to the Government and to the defendant, and I will say to both the Government and the defendants that I will—it is the intention of the Court to replace the Juror Cox with the first alternate. If either side have any objection to that procedure, I will hear it at this time.

Mr. Foreman: May it please the Court, I take it from the Court's suggestion that in the event—that the case would proceed to trial unless some motion was granted to the contrary?

The Court: Yes, sir. Now, I stated that these proceedings may have operated to some prejudice to either the Government or to the defendant. I will hear the defendants or the Government either to move for mistrial if you wish to do so.

Mr. Foreman: We do move for mistrial, Your Honor.

Does the Court care to hear anything further than the motion?

The Court: Yes, I would like to hear your reason.

Mr. Foreman: The reason being, Your Honor, that psychologically and historically my theory is before this Bar jurors have even greater weight in a Federal Court than in a State Court. There is a certain amount of feeling that is recognized, as was expressed by one of our jurors, Mr. Allen, at the bench yesterday, with reference to the almost infallibility of Federal proceedings, and it is our belief that both the act and the action of the—

The Court: I will say in present months they have not been infallible.

Mr. Foreman: Well, they have been more virtuous and serious in their efforts to prosecute cases that perhaps a lesser ambitious prosecutor might not have pressed, but, may it please the Court, it is our belief that not only this panel in this trial at this sitting, and not only this case, but probably almost any case now on the docket of this Court is apt to be prejudiced by what has happened, although what has happened could only, should have happened in the protection in the due processes of justice, but it is our belief that this jury, all of them, were rendered at least questionable by the battery of cameras that each

of them ran into as a gautlet yesterday about at noontime, and each of them of the battery of questions of the various—

The Court: That is not in the record, but I did hear about it.

Mr. Foreman: That coupled with the resulting publicity that is bound to occur as the proceedings are, and they will be probably reported in the press, radio and television, public agencies, is apt to suggest to the jury that they, which all officers of this Court know not to be true, and that is that they are subject to being investigated by the FBI or Internal Revenue or other agencies of the Government just because of their jury service, and while I know that this Court is fair and impartial—

The Court: Let me comment, sir, that under the requirements that jurors be of good moral character, I don't think that would bother a man of good moral character, being investigated.

Mr. Foreman: I know it wouldn't, Judge, but a great many people of good moral character would hate to have their neighbors interviewed or be called on.

The Court: I don't think any neighbors were interviewed. I think the information we have here is in the files of the FBI or known criminal records.

Mr. Foreman: I want to repeat again, I am not criticizing anyone, Your Honor.

The Court: Oh, yes, yes.

Mr. Foreman: I don't want to be in a position of doing so. I am only suggesting what might be to a layman's mind.

The Court: I will say now, I don't think the neighbors of jurors or prospective jurors are going to be interviewed. A look may be taken at the criminal records in the possession of the FBI or the criminal records in the possession of the Houston Police Department, but I don't think—the press is here and the public is here, and I don't want that statement to go unchallenged about neighbors of jurors being interviewed. I don't think that has happened, and I don't believe it will happen. I don't think the neighbors of Mr. Cox were interviewed.

Mr. Foreman: I am sorry I mentioned it if it is to be interpreted as my suggesting it did happen.

The Court: I don't want that suggestion to go unchallenged because I don't believe Cox's neighbors were interviewed or the neighbors of any juror or prospective juror have been or will be interviewed.

Mr. Foreman: I don't either, but I don't know that they know it.

The Court: And I want them to know it, and I hope the press will publish that statement, and I hope they will publish it correctly.

Mr. Foreman: I just feel for the time being, Your Honor, the man, since he did not become disqualified after he was accepted as a juror, but was disqualified from the beginning, that the argument and ruling of this Court, aside from the Court wanting to do everything he can to protect the rights of the litigants, both Government and defense, that the rule of law that the Court followed, and I am referring to the case of Mr. Turner last week when we had practically the same situation, would authorize and justify, and because of what this Court has stated, the

very possibility of harm, which the Court recognizes, in the Court's own words, we think dictate a mistrial, and we respectfully, and on behalf of all of the defendants, corporate as well as the personal defendants, move for a mistrial.

The Court: Does each defendant join in the motion?

Mr. Foreman: Do each of you join in the motion?

Defendants (Individually): Yes.

Mr. Wilkey: The Government has no desire for or interest in other than completely fair and impartial trial. If the defendants in any way could have been prejudiced by this proceedings, which were necessary, we certainly do not oppose the motion for mistrial.

The Court: Well, I will restate what I said last week, that I will not argue with opposing counsel when they are in agreement. The motion for mistrial on behalf of the defendants is granted.

I want to say, and make this public observation, that we have had a very high number of felons on the jury panel. We had 54 jurors report here Monday morning. We had a high number of those who did not report because the— I am sorry the press is leaving because I want to say something I hoped would be published.

Mr. Foreman: They have a deadline, Your Honor.

The Court: Yes, I understand that. Miss Brown of The Press is not crowded for tomorrow morning's issue. I notice who left. I want to say we had a high number of felons on this jury panel. Over 54 who reported yesterday, which I want to say is a low number of the 90 who were sworn, that number was low for this reason; that that notice

went out on short notice. Jury notices go out by registered mail. Registered mail is handled slowly. If the letter has to be forwarded, it makes for further delay. If a man has moved down the street, it is another day before he gets it, so a large number did not get their mail in order to be here Monday morning, but there were 54 who reported yesterday morning, and one other who came to see me Friday in chambers, which raised that number to 55. The man who came to see me in chambers confided that he had been convicted of counterfeiting, and he was therefore disqualified, and I excused him.

Then, when I asked of the jury panel in open court how many had been convicted of felony, three arose. Each stated that they had been convicted of a felony, and immediately thereafter another man came to see me and I saw him in the jury room. He said, "Your Honor, I didn't want to stand up out there and admit it. There were some of my friends in the courtroom, but I have been convicted of bank robbery," so that made another one. Now, we discover that Juror Cox, although he made no admission of it, has a long and impressive criminal record, so that brings that number to six. Six out of 55 is more than 10 per cent, which I think is a pretty high average to find in a jury box. More than 10 per cent of the names in the jury box discovered to be present with felony records, and the case of Cox, certainly a long and impressive criminal record.

They were set for trial this week, the first case the case against Parr and others. The next case is Leon F. Williams and then Abelardo Salinas. I did not excuse the jury panel finally. Those jurors who were excused were told to be

subject to recall in 24 hour notice, so I will ask those jurors to come in and I will excuse them until Monday morning. I will instruct the Clerk to advise the other jurors they shall report back for further jury service at 9:30 Monday morning, and I will instruct the United States Attorney's office to be ready to try the case against Williams and Salinas next week, starting Monday morning, and will you ask the remaining 14 members of the Parr jury to come in, please?

Mr. Wilkey: Your Honor, we would like to ask the Court to reset the case of the United States vs Parr et al at the earliest convenient time on the Court docket.

The Court: I will ask the bailiff to bring the jury in and when I excuse them, I will hear anything further you may have in connection with this case.

(The remaining 14 jurors were escorted into the jury box.)

The Court: The 14 remaining members of the jury are present. I will advise you, gentlemen of the jury, that the Juror Cox has been discharged. He was discharged for lack of qualification. A motion for mistrial has been made, and the motion has been granted. A mistrial has been declared, and you are discharged as jurors in the case of the United States vs George B. Parr and others, however you are not finally discharged. We have some other cases that we can try next week, so you are excused with instructions to return to this Court next week for further jury service at 9:30 Monday morning.

Thank you, gentlemen.

(Thereupon the 14 jurors retired from the courtroom.)

The Court: I will now hear the United States Attorney.

Mr. Wilkey: We renew our request that the case of the United States vs Parr, et al. be set on the docket of this Court at tht earliest convenient date.

The Court: What says the defendant?

Mr. Sharpe: Your Honor, please, I don't know the condition of your docket, but I would like to ask the Court to consider my personal situation. I have now lost the better part of two weeks in connection with the two mistrials and—

The Court: I didn't know a lawyer ever lost anything as long as he was gainfully employed.

Mr. Sharpe: Yes, sir, yes, sir, but I did make arrangement with the lawyers of my county to put my cases over until the April session of Court. We have a docket call in two Districts on the first Monday in April.

The Court: Your State District Court?

Mr. Sharpe: Yes, sir.

The Court: First Monday in April.

Mr. Sharpe: And at that time—

The Court: And I am sure we will again be advised that Mr. Foreman has an engagement for April 21st.

Mr. Sharpe: Well, yes, sir, yes, sir, and I would ask the Court to consider that situation on my part. I have one case definitely set for that week. I don't remember the date of it right now, and I will be frank with the Court, it was set subject to this case if it continued that long, but unless the Court resets it for that week, I won't have any excuse to not try that case and, if at all possible, I would like the Court to at least pass it until sometime in May, and I can make arrangements and possibly get most of my cases tried in April.

Mr. Foreman: May it please the Court, I likewise have reset a great many cases in the State Court here for April and through the week of May 6.

I have two murder cases set in this county, at least we have agreed to set them. I don't know if they have been posted yet or not, for the week of May 6, and have recessed several cases before the Court of Criminal Appeals which I would like to get heard and determined before the summer recess. I think it would keep me from having to try a lot of cases during the summer, if I can get an opinon in those cases because the point of law involved in them is involved in a great number more. If I don't get them at least 90 days before adjournment, I will have to go through the summer shadow-boxing with the point of law.

The Court: You again want to ask the Court to set the retrial sometime after April 21?

Mr. Foreman: Yes, Your Honor, and I would like to have as long a period of time to recover from matrimony as the Court permits.

The Court: As long a period of time thereafter?

This is March 20.

Mr. Sharp, your settings were in April, you say?

Mr. Sharpe: Yes, sir. The first Monday in April in particular.

The Court: I don't again have in my heart to tell Mr. Foreman that he is going to have to get married during this long trial. I say "long trial;" it is my experience with this case they've been very short.

Well, gentlemen, the date I am looking at is—which would accomodate Mr. Sharpe and defendants, mostly accomodate Mr. Foreman, would be May 6, the first Monday in May.

Mr. Foreman stated he had two murder cases but I think possibly Mr. Foreman would be almost any time either litigating or honeymooning so I am going to suggest resetting of this case for May 6.

Mr. Wilkey: The Government has been in a continuous state of readiness, and will be ready May 6, Your Honor.

The Court: Very well. The Court is set for trial May 6, 1957, and I want to say to all interested parties, that the settings are made from the bench and I don't consider a further notice of the setting is necessary. Is it so understood?

Mr. Foreman: Yes, Your Honor.

Mr. Sharpe: Yes, Your Honor.

Mr. Wilkey: Yes, Your Honor.

The Court: I also, if we are ready to go to trial in this case May 6, I hope we will have any new motions

behind us. I hope we will not have to consider motions on that date, and the following date, and I will allow all parties to this case, all defendants and the Government as well, 20 days from this date in which to file new motions that you may want to file in this case.

Is there anything further, gentlemen?

Mr. Wilkey: No, Your Honor.

Mr. Foreman: No, Your Honor.

The Court: Court will stand adjourned.

652 REPORTER'S TRANSCRIPT OF PROCEEDING ON VOIR DIRE EXAMINATION OF JURORS, HELD ON 5-6-57.

(Caption Omitted)

643 MORNING SESSION—MAY 6, 1957

The Court: I will first sound the docket of criminal cases set for trial this week. First is Criminal 12,829, the United States vs George B. Parr and others.

Mr. Wilkey: The Government is ready, Your Honor.

Mr. Foreman: The defendant is ready, Your Honor.

The Court: And are all defendants present in Court?

Mr. Foreman: Yes, Your Honor.

The Court: Thank you.

We will now proceed with the selection of the jury to try the case of the United States vs George B. Parr and

others. It appears that we have a list of jurors, 66 names, and I understand that all are qualified except the last man on the list, A. C. English. Is that correct, Mr. Anderson?

The Clerk: Yes, sir.

The Court: Will you come forward, Mr. English? Will you come inside and stand before the Clerk's desk? Since I have but one man to interrogate, I would rather do it at close range.

Mr. English, I will propound to you a number of questions which will bear upon your qualification to serve as a petit juror in this Court, but before I propound the questions, I will have the Clerk administer the oath to give true answers to questions.

(Whereupon the oath was administered to Mr. A. C. English by the Clerk.)

The Court: Are you a citizen of the United States and of the State of Texas?

Venireman English: Yes, sir.

The Court: And where do you reside?

Venireman English: 891 West 41st Street, Houston.

The Court: In Harris County?

Venireman English: Yes, sir.

The Court: Are you a qualified citizen in Harris County?

Venireman English: Yes, sir.

The Court: Are you a freeholder within the State of Texas or a householder in Harris County?

Venireman English: I am a householder in Harris County?

The Court: Are you a married man?

Venireman English: Yes, sir.

The Court: And you do provide a home for your family?

Venireman English: Yes, sir.

The Court: Are you able to speak, read, write and understand the English language?

Venireman English: Yes, sir.

The Court: Have you served as a juror in this Court at any time within the past twelve months?

Venireman English: No, sir.

The Court: Have you ever been convicted of a felony from which you have not received a full pardon?

Venireman English: No, sir.

The Court: Have you ever been convicted of any offense other than a traffic offense?

Venireman English: No, sir.

The Court: Are you now under indictment or other legal accusation for theft or any felony?

Venireman English: No, sir.

The Court: Mr. English, from your answers, it appears you are qualified to serve as a juror in this Court. I will now instruct the Clerk to administer to you an oath to serve as a juror in this Court.

(Thereupon the oath was administered to Venireman English by the Clerk.)

The Court: And, Mr. English, what is your occupation?

Juror English: Superintendent, Pittsburgh Plate Glass Company.

The Court: I will ask that counsel add that information to your list. Mr. English is superintendent of the Pittsburg Plate Glass Company.

Thank you, Mr. English, you may take your seat.

I will now propound to the entire jury panel of 66 questions which will bear upon your qualification to serve as jurors in this particular case.

In this case to be tried, it is the case of the United States of America vs George B. Parr, D. C. Chapa, B. F. (Tom) Donald, Jr., Jesus Garza, Santiago Garcia, Octavio Saenz, Jesus Oliveira, O. P. Carrillo, Oscar Carrillo, Sr., the Texas State Bank of Alice, and the San Diego State Bank of San Diego, Texas.

This is a case against 11 defendants, nine of whom are natural persons, all men. They are in the courtroom. And two State banks. I am going to call on the nine natural defendants, and as I call your names, I want you to rise and face the jury panel, and remain standing until I ask you to be seated.

George B. Parr, and will you turn and face the jury panel?

D. C. Chapa, B. F. (Tom) Donald, Jr., Jesus G. Garza, Santiago Garcia, Octavio Saenz, Jesus Oliveira, O. P. Carrillo, Oscar Carrillo, Sr.

(The defendants complied with the Court's request.)

You gentlemen may now be seated.

Ladies and gentlemen of the jury panel, you have seen each of the nine natural defendants. I will ask you if any of you know any of the defendants whose names were just called, and who have just stood before you.

(No response.)

Obviously none of you do.

I want to say to you that there are 66 of you and I must ask the questions of you as a group. I want it understood that if there is any question which you should answer, to give full information, you are instructed to give such answer and a failure to answer questions which should be answered is construed as an answer.

This is a case in which the defendants are charged by indictment in 20 counts. The defendants George B. Parr, D. C. Chapa, B. F. (Tom) Donald, Jesus Garza, Octavio Saenz, Oscar Carrillo, Sr., and the Texas State Bank of Alice are charged in each of the 20 counts. The Defendant Santiago Garcia is charged in Counts 4, 5, 8, 13, 14, 15, 17, 18, 19 and 20 of the indictment. The Defendant Jesus Oliveira is charged in Count 20 only, and the Defendant O. P. Carrillo is charged and triable in Count 20 only. The Defendant San Diego State Bank is charged and triable on Counts 1, 2, 3, 7, 10, 11, 12, 16 and 20.

The first 19 counts are charges under the Mail Fraud Statute, charging violations of the Mail Fraud Statute. The Mail Fraud Statute is an Act of Congress which makes it a crime for anyone to devise a scheme or artifice to defrause and use the mails in furtherance thereof. In

Counts 1 through 19 are charged various violations of the Mail Fraud Statute involving alleged schemes, alleged to have commenced in September, 1949 and continued up to the month of February, 1954, in the operation of the Benavides Independent School District in Duval County, Texas.

Count 20 is a count charging conspiracy to violate the laws of the United States, particularly to violate the Mail Fraud Statute. All of the defendants are charged and triable on Count 20.

I will ask if any of you have any knowledge concerning the offenses of which the defendants are triable? If so, will you please rise? I first want those who have any knowledge to rise and remain standing. I want anyone who would answer that question yes, anyone who has any knowledge, to please rise. Is there anyone who has any indecision about the question?

Very well. I assume that all are standing who have knowledge of the matter. I see 17 gentlemen standing.

First, what is your name, sir?

Juror: Paschal J. Aucoin.

The Court: What is the source of your knowledge of the offenses?

Juror: Newspapers, sir. I have read something of it.

The Court: Do you have knowledge from any other source?

Juror: No, sir.

The Court: Have you read of the matter on one or more occasions?

Juror: Well, I read the paper more than one occasion, but this matter, I recall just once.

The Court: Considering you have read about the people as you describe them, or something of them, on more than one occasion, and considering that you have read about the alleged offenses, I will ask you if you have formed any opinion?

Juror: I haven't formed an opinion, but there possibly—my thinking might be influenced, and I think you should know it.

The Court: Very well. I want to make a note. You are No. 2, Paschal J. Aucoin. Very well, sir. You may be seated.

And the next gentleman?

Juror: Edgar Copley.

The Court: No. 5, Edgar Copley. What is the source of your prior knowledge?

Juror: The newspapers.

The Court: Do you have knowledge from any other source?

Juror: No, sir.

The Court: Have you read it in the newspapers on one or more than one occasion?

Juror: Just one occasion.

The Court: Considering that you have read it in the newspaper, I will ask you if you have formed any opinion concerning this matter?

Juror: No, sir.

The Court: Do you have any opinion as to either the guilt or innocence of any of these defendants?

Juror: No, sir.

The Court: And if you should be selected as a juror to try this case, can you and will you try it fairly on the evidence as you see it?

Juror: Yes, sir.

The Court: Very well. You may be seated.

This gentleman, please?

Juror: Robert E. Gleason.

The Court: Robert E. Gleason, No. 19. What is the source of your knowledge?

Juror: Mainly from the newspapers, however, I have an aunt who resides in Kingsville, Texas, and—

The Court: Have you ever discussed these matters with her?

Juror: Just generally. Nothing specific.

The Court: Considering that you have read of these charges in the newspapers, and that you have had conversations with your aunt who resides in Kingsville, I will ask you if you have come to any conclusion regarding the case?

Juror: I am prejudiced, sir.

The Court: You definitely say you are prejudiced?

Juror: Yes, sir.

The Court: Very well, sir. You may be seated.

And the next is James M. Carder?

Juror: Right, sir.

The Court: What is the source of your knowledge?

Juror: Radio and newspapers.

The Court: On one or more occasions?

Juror: Well, on this particular charge.

The Court: I will ask if you have any preconceived opinions as to the guilt or innocence of any of these defendants?

Juror: Yes, sir, I have.

The Court: Very well, sir.

The first gentleman, please?

Juror: Frances Whalen.

The Court: What is the source of your knowledge?

Juror: Newspapers.

The Court: Do you have knowledge from any other source?

Juror: No, sir.

The Court: Have you read of it on one or more occasions?

Juror: Well, I don't really remember this particular one, but I have read the newspapers about these particular gentlemen, but I don't know it is this case.

The Court: Considering you have read of the alleged offenses in the newspapers, I will ask if you have reached any conclusion regarding the matter?

Juror: No, sir.

The Court: Do you have any preconceived ideas as to either the guilt or the innocence of any of these defendants?

Juror: No, sir.

The Court: And if you should be selected as a juror to try this case, will you try it fairly on the evidence as you see it?

Juror: Yes, sir.

The Court: Fairly and impartially?

Juror: Yes, sir.

The Court: Very well, sir. You may be seated.

The next gentleman is Thomas J. Costello, Jr.?

Juror: Yes, sir.

The Court: What is the source of your knowledge?

Juror: Television and newspapers.

The Court: Do you have knowledge of the case from any other source?

Juror: No, sir.

The Court: Considering that you have read of these alleged offenses in the newspaper, and heard of it on the radio, I will ask if you have any preconceived opinions?

Juror: Yes, sir.

The Court: I will ask you if your opinions would amount to a prejudice either one way or the other?

Juror: Yes, sir, I believe it would.

The Court: Very well, sir. You may be seated.

The next gentleman is Bert W. Hayley?

Juror: Yes, sir.

The Court: What is the source of your knowledge?

Juror: Newspapers and television.

The Court: Do you have knowledge from any other source?

Juror: No, sir.

The Court: Considering your knowledge of the case from the newspapers and television, I will ask if you have any preconceived opinion?

Juror: No, sir.

The Court: Do you have prejudice as to any defendant either one way or the other, as to either the guilt or the innocence of any defendant?

Juror: No, sir.

The Court: And if you should be selected as a juror to try this case, will you try it fairly on the evidence as you see it?

Juror: Yes, sir.

The Court: Very well, sir. You may be seated.

The next one is Mr. Fred B. Smith, Jr.?

Juror: Yes, sir.

The Court: What is the source of your knowledge?

Juror: Newspapers.

The Court: Do you have knowledge from any other source?

Juror: No, sir.

The Court: Have you read of the matter on one or more occasions?

Juror: One occasion that I recall.

The Court: Considering that you have read of the alleged offenses in the newspapers on one occasion, I will ask if you have formed any preconceived ideas?

Juror: No, sir.

The Court: Have you formed any prejudices either one way or the other in favor of or against the defendants?

Juror: No, sir.

The Court: And if you should be selected as a juror to try this case, will you try it fairly on the evidence as you see it?

Juror: Yes, sir.

The Court: Very well, sir. You may be seated.

And the next gentleman is Mr. Louis Davis?

Juror: Yes, sir.

The Court: Very well. What is the source of your knowledge?

Juror: Radio and television and newspapers.

The Court: Do you have knowledge from any other source?

Juror: No, sir.

The Court: Have you read of it and heard of it on one occasion or more?

Juror: More than one.

The Court: Considering that you have prior knowledge of the matter by reading of it in the newspapers and hearing it on the radio, I will ask if you have formed any preconceived opinions?

Juror: No, sir.

The Court: Have you formed any opinion concerning either the guilt or innocence of any of these defendants?

Juror: No, sir.

The Court: And if you should be selected as a juror to try this case, will you try it fairly on the evidence as you see it?

Juror: Yes, sir.

The Court: Very well, sir. You may be seated.

And your name?

Juror: Louis D. Hillyer.

The Court: What is the source of your knowledge?

Juror: Newspapers and television.

The Court: Do you have knowledge from any other source?

Juror: No, sir.

The Court: Considering you have read and heard of the matter in the newspapers and on the radio and television, I will ask if you have formed any preconceived opinions?

Juror: If all evidence has been presented by those sources, I have.

The Court: I will ask if you entertain any prejudice, either in favor of or against the defendants?

Juror: With the testimony in those mediums, I have formed a prejudice.

The Court: Very well, sir, you may be seated.

The next is Earl J. Nitsch?

Juror: Yes, sir.

The Court: What is the source of your prior knowledge, Mr. Nitsch?

Juror: Newspapers.

The Court: Do you have knowledge from any other source?

Juror: No, sir.

The Court: Have you read of it on one or more occasions?

Juror: I believe it was just one.

The Court: Considering you have read of it in the newspapers on just one occasion, I will ask if you have formed any preconceived opinions as to the guilt or innocence of these defendants, or any of them?

Juror: No, sir, I have not.

The Court: I will ask, if you should be selected as a juror in this case, if you will try it fairly on the evidence as you see it and as you hear it?

Juror: I would.

The Court: The next is Mr. Ellis, S. D. Ellis, Jr., No. 40.

What is the source of your prior knowledge?

Juror: Newspapers.

The Court: Do you have knowledge from any other source?

Juror: No, sir.

The Court: Have you read of it on one or more occasions?

Juror: More than one.

The Court: Considering that you have read of these matters in the newspaper, I will ask if you have formed any preconceived opinions?

Juror: No, sir.

The Court: Either as to the guilt or the innocence—

Juror: No, sir.

The Court: Do you entertain any prejudice either for or against these defendants?

Juror: No, sir.

The Court: And if you should be selected as a juror to try this case, will you try it fairly on the evidence as you see it?

Juror: Yes, sir.

The Court: Very well. You may be seated.

Now, the gentleman, going back of the rail, the gentleman in the first row. What is your name?

Juror: Herbert E. Beasley.

The Court: Herbert E. Beasley, No. 45. What is the source of your prior knowledge?

Juror: Newspapers and talking with persons who live in that area.

The Court: Have you read of these matters in the newspapers on one or more occasions?

Juror: Three or four.

The Court: And you also mentioned discussing the matter with a person who lived in the area. Was that on one or more occasions?

Juror: One occasion.

The Court: Was that a relative or a friend?

Juror: A friend.

The Court: Now, considering that you have read of these matters previously and you have discussed it with a friend who lives in the area, I will ask if you have formed any preconceived opinions?

Juror: Yes, sir.

The Court: I will ask if your preconceived opinion would amount to a prejudice either in favor of or against the defendants?

Juror: Yes, sir, I think so.

The Court: Very well. You are Mr. Beasley?

Juror: Yes, sir.

The Court: Very well. You may be seated.

What is your name, sir?

Juror: Charles R. Glazier.

The Court: No. 51. What is the source of your prior knowledge?

Juror: Newspapers.

The Court: Do you have knowledge from any other source?

Juror: No, sir, I have not.

The Court: Have you read of it on one or more occasions?

Juror: I would say more than one.

The Court: Considering that you have read of these matters of the alleged offenses in the newspapers, I will ask if you have formed any preconceived opinions?

Juror: I would say I would be prejudiced, yes.

The Court: You say that you would be prejudiced?

Juror: I would.

The Court: Very well, sir.

What is your name, sir?

Juror: W. L. Morgan.

The Court: William L. Morgan, Jr.?

Juror: Yes, sir.

The Court: What is the source of your prior knowledge?

Juror: Newspapers.

The Court: Do you have knowledge from any other source?

Juror: No, sir.

The Court: Have you read it on one or more occasions?

Juror: Only once, I believe, Your Honor. Only once I think.

The Court: Considering that you have read of it on one occasion, I will ask if you have formed any preconceived opinions as to the guilt or innocence of these defendants?

Juror: No, sir, I haven't.

The Court: I will ask if you have formed any prejudice either in favor of or against the defendants?

Juror: No, sir.

The Court: Very well, sir. You may be seated, sir.

Ralph W. Lorenz?

Juror: Yes, sir.

The Court: What is the source of your knowledge?

Juror: Newspapers.

The Court: Have you knowledge from any other source?

Juror: Only discussions on the job over here where I work. We discuss it now and then.

The Court: Have you read it once or more than once?

Juror: More than once.

The Court: Considering that you have read of these matters in the newspaper, and you have had discussions concerning it on the job, I will ask if you have formed any preconceived opinions?

Juror: Only on what I read. I guess I would be.

The Court: From what you have read, have you formed any opinion as to the guilt or innocence of these defendants?

Juror: I have formed an opinion.

The Court: Would that opinion amount to a prejudice either in favor of or against any defendant?

Juror: Well, it is hard to say. It would be against the defendants.

The Court: Do you entertain any doubts as to whether you entertain a prejudice?

Juror: I believe I would be.

The Court: Very well, sir. You may be seated.

The next is Horace H. Ellison?

Juror: Horace H. Ellison.

The Court: What is the source of your prior knowledge, Mr. Ellison?

Juror: The newspapers.

The Court: Do you have knowledge from any other source?

Juror: Yes, sir, I have.

The Court: From what source?

Juror: A former juryman, a friend of mine, on the last trial.

The Court: Considering you have read of this case in the newspapers, and that you have discussed the case with a former juror, I will ask if you have any preconceived opinions?

Juror: Yes, sir.

The Court: Would that amount to a prejudice either in favor of or against any defendant?

Juror: Yes, sir.

The Court: You may be seated.

Leslie G. Rucker?

Juror: Yes, sir.

The Court: What is the source of your prior knowledge?

Juror: Newspapers and radio.

The Court: You have read of it. Have you read of it and heard of it on more than one occasion?

Juror: More than one occasion.

The Court: Do you have any knowledge of it from any other source?

Juror: No, sir, I do not.

The Court: Considering you have read of this case in the newspapers, and heard of it on the radio, I will ask if you have formed any preconceived opinion?

Juror: Yes, I have.

The Court: Would that preconceived opinion amount to a prejudice against any defendant?

Juror: I believe it would.

The Court: You may be seated.

That leaves Mr. Aucoin. I believe you indicated you had some matter you wanted to discuss with the Court?

Juror: No, I don't.

The Court: Let me ask you again if your prior knowledge of this case would amount to a prejudice either in favor of or against any defendant?

Juror: I would hate to admit a prejudice.

The Court: I want to be certain I understand you. I want you to tell me whether you do or do not entertain a prejudice.

Juror: I know I don't entertain a prejudice.

The Court: You stated that you do not?

Juror: Yes.

The Court: Do I understand if you are selected as a juror to try this case, you will try it fairly on the evidence as you see it?

Juror: Yes, sir.

The Court: Very well. You may be seated.

Mr. Foreman: May it please the Court, in view of the answer as I took it down the first time the Court questioned Mr. Aucoin, in order not to prejudice the rest of this panel we would like to interrogate Mr. Aucoin as to what we consider a diversity of his answers, at the bench.

The Court: Very well, sir. That may be done.

(The following proceedings were held at the bench out of the presence and hearing of the jury panel.)

Mr. Foreman: May it please the Court, I find what Mr. Aucoin said is universally true of every juror I have

interrogated, that is, they don't like to admit a prejudice. I took down his exact words. He said no opinion, but his thinking would be influenced by what he read. I would like to know what it is he thinks that would influence him?

Juror (Aucoin): Well, I said there was a possibility that my thinking would be influenced, because I have read about Mr. Parr and I have read about Mr. Foreman, and there has been a lot of publicity, detrimental publicity, and when the Judge asked if we had any prior knowledge, I felt I had to get up and say that I had read about this.

The Court: That is proper.

Mr. Foreman: Mr. Aucoin, aside from whatever you might know about the case, would the fact that Mr. Parr is one of the defendants perhaps prejudice you against him as a defendant in the case, so as to cause you to have a different attitude toward him as a defendant than you would if you hadn't read what you have read?

Juror Aucoin: Well, I would think it would. I would think that I would be influenced to some extent.

Mr. Wilkey: I think he should be challenged.

Mr. Foreman: You mean excused?

Mr. Wilkey: Yes.

(The following proceedings were held in the presence and hearing of the jury panel.)

The Court: From the answers, it appears that there are ten who admit to a prejudice either one way or the other in this case, and they are No. 2, Paschal J. Aucoin; No. 19,

Robert E. Gleason; No. 20, James M. Carder; and I am striking them from the list as disqualified in this case, 30, Thomas J. Costello, Jr.; 36, Louis D. Hillyer; 45, Herbert E. Beasley; 51, Charles R. Glazier; 61, Ralph W. Lorenz; 62, Horace H. Ellison; 63, Leslie G. Rucker.

That reduces the list to 56.

Now, the defendants are represented in the defense of this case by Mr. Percy Foreman. Will you please rise, Mr. Foreman. Mr. Gilbert Sharpe. Will there be other counsel for the defendants?

Mr. Foreman: Yes, Your Honor, Mr. Luther Jones asked me to ask permission of the Court to be excused today and appear tomorrow.

The Court: And Mr. Luther Jones, of Corpus Christi.

I will ask if any of you know Mr. Percy Foreman, Mr. Gilbert Sharpe, who have appeared before you, or Mr. Luther Jones of Corpus Christi, who is not here today? If so, will you please rise?

I see four, five gentlemen standing, six.

You are Mr. Costello, aren't you? You will not need to rise again because you have been stricken from the list, so any of the ten names I called off as being stricken will not need to rise again.

Your name, sir?

Juror: Arthur Koy.

The Court: Which of these gentlemen do you know?

Juror: I don't know Mr. Foreman in person, but I have had occasion to see him in action, and in the newspapers.

The Court: You do not know him personally, but you know him by sight and reputation? How long have you known of him?

Juror: About ten or twelve years.

The Court: Considering that you have known Mr. Foreman by reputation and sight for ten or twelve years, and he appears for the defendants, would that in any way influence your judgment in this case?

Juror: No.

The Court: Either in favor of or against his clients?

Juror: No.

The Court: If you should be selected as a juror to try this case, will you try it fairly on the evidence as you see it?

Juror: Yes.

The Court: You may be seated.

Your name?

Juror: Louis Davis.

The Court: Which of these gentlemen do you know?

Juror: Mr. Foreman.

The Court: Do you know any of the others?

Juror: No, sir.

The Court: How long have you known Mr. Foreman?

Juror: I just met him last year.

The Court: You met him last year. Did he ever represent you or any of your close friends or relatives? Did he represent you?

Juror: Yes, sir.

The Court: Considering that Mr. Foreman has represented you in a professional capacity, would that in any way bias or influence or affect your judgment in this case, either in favor of or against his clients?

Juror: Yes, sir.

The Court: You believe that it would?

Juror: Yes, sir.

The Court: Very well. You may be seated.

Your name, sir?

Juror: Leggett.

The Court: Fred D. Leggett, No. 38. Which of these gentlemen do you know?

Juror: Mr. Foreman.

The Court: Do you know any of the others?

Juror: No, sir.

The Court: How long have you known Mr. Foreman?

Juror: About 50 years.

The Court: You must have been from Polk County?

Juror: That is right.

The Court: That sounds like a good Polk County name.

Juror: That is right.

The Court: He wasn't very big 50 years ago. Has your acquaintance with Mr. Foreman been intimate down through the years?

Juror: My folks and all are very good friends.

The Court: Considering you have known him 50 years and you are from Polk County, I will ask if that would in any way bias or influence or affect your judgment in this case, either in favor of or against his clients?

Juror: No, sir.

The Court: Has Mr. Foreman ever represented you?

Juror: No, sir.

The Court: Has he ever represented any of your close friends or relatives?

Juror: I don't think so.

The Court: Considering then that he is a friend of yours of 50-years standing, and if you should be selected as a juror to try this case, will you try it fairly on the evidence as you see it?

Juror: Yes, sir.

The Court: Very well. You may be seated.

And what is your name, sir?

Juror: James L. Cook.

The Court: Which of these gentlemen do you know?

Juror: Mr. Foreman.

The Court: Do you know any of the others?

Juror: No.

The Court: How long have you known Mr. Foreman?

Juror: Well, I never have been introduced to him, but I have heard about him all of my life.

The Court: Do you know him by sight?

Juror: Yes, sir.

The Court: Then you know him by sight and by reputation?

Juror: Yes, sir.

Tht Court: Considering that you do not know Mr. Foreman personally, but you do know him by sight and by reputation, I will ask if your knowledge of Mr. Foreman in that manner would in any way bias or influence or affect your judgment in this case, either in favor of or against his clients?

Juror: No, sir.

The Court: And if you should be selected as a juror to try this case, would you try it fairly on the evidence as you see it?

Juror: Yes, sir.

The Court: Very well, sir. You may be seated.

The next gentleman is Mr. Earnest J. Foreman. Which of these gentlemen do you know?

Juror: Mr. Foreman, by sight and reputation.

The Court: Is he a relative?

Juror: As far as I know, I couldn't be sure of that.

The Court: Are you from Polk County?

Juror: No.

The Court: How long have you known him by sight and reputation?

Juror: I guess about eight years.

The Court: Considering that you have known Mr. Foreman by sight and reputation for about eight years, I will ask if that would in any way bias, influence or affect your judgment in this case in any manner?

Juror: It surely wouldn't.

The Court: Either in favor of or against his client?

Juror: No, sir.

The Court: If you are selected as a juror to try this case, would you try it fairly on the evidence as you see it?

Juror: Yes, sir.

The Court: From the answers to that question, the Juror Louis Davis is likewise disqualified. That reduces the list to 55.

The Government is represented in the prosecution of this case by Mr. Malcolm R. Wilkey, United States Attorney.

Mr. Foreman: Pardon me. Would it not be well at this time to ask a question we would have to ask later. Would the appearance of me in the case, in view of the practice I have had, in any way influence the jurors? I was going to ask the question later, and while you are on me, that question might as well—

The Court: Will you state it again?

Mr. Foreman: In view of the nature—

The Court: I will suggest that Mr. Foreman ask the question for the Court. Will you please?

Mr. Foreman: My question, in view of the nature of my practice and the publicity that such practice receives,

the people that I have been known to defend, or any cases that I ever may have tried, whether you were interested in them or not, have you, from anything you may have read or heard, formed an opinion concerning me as an individual which might in any way influence or affect your attitude toward the case in which I appear as an attorney? I ask that knowing that you have a right to any opinion that you have, and for no one to criticize.

The Court: Very well. The question has been asked. Is there anyone who would answer that question yes? If so, please rise.

(No response.)

Very well. Thank you.

Mr. Foreman: Thank you, Your Honor.

The Court: I will ask Mr. Malcolm R. Wilkey, the United States Attorney, and Edgar O. Bottler, Assistant United States Attorney, I will ask if you knew either Mr. Wilkey or Mr. Bottler, the gentlemen now standing?

(No response.)

Obviously none of you do.

Mr. Wilkey: Your Honor, Mr. Freeman here will be associated with us in the case, Harold Freeman.

The Court: Will you please rise, Mr. Freeman?

In what capacity are you appearing, Mr. Freeman?

Mr. Wilkey: He is just appearing with us to assist us with the presentation of the case, documents and so on.

Mr. Foreman: We have no objection.

The Court: Do any of you know Mr. Harold O. Freeman, the gentleman who is now standing?

(No response.)

Obviously none of you do. You may be seated.

Do any of you have any opinion concerning the Defendant George B. Parr which might in any way affect your verdict? If so, will you please rise?

There is one gentleman standing. Your name, sir?

Juror: Hollis C. Ballard.

I have no knowledge of this particular charge as against George Parr.

Mr. Foreman: Pardon me. I hate to interrupt, but may we examine him at the bench?

The Court: I suggest you do.

(The following proceedings were held at the bench out of the presence and hearing of the jury panel.)

The Court: This is Mr. Hollis C. Ballard, No. 9.

Juror (Ballard): I started to say, I have no knowledge of this particular charge, but I have followed Parr's various write-ups in the papers and listened to it on the radio, and although if I am selected on this jury—

The Court: Speak in a more subdued voice.

Juror (Ballard): I would do my utmost to be fair and impartial and listen to the evidence, but I firmly believe some of the things which I know about this gentle-

man would color at least my interpretation of the evidence.

The Court: Well, I think Mr. Ballard should be stricken.

Mr. Wilkey: Thank you for your frankness.

(The following proceedings were held in the presence and hearing of the jury panel.)

The Court: Do any of you have any information or any opinion relating to Duval County which might in any way affect your verdict?

(No response.)

Obviously none of you have.

Are any of you now or have you ever been a peace officer? If so, please rise.

(No response.)

Obviolusy your answer is no.

Have any of you ever been a member of a school board? If so, will you please rise?

(No response.)

Have any of you ever been an assessor or collector of taxes?

(No response.)

Have any of you ever been employed in a bank in any capacity? If so, will you please rise?

(No response.)

Obviously none of you have.

Have any of you ever served as a grand juror in either the State or Federal Courts.

One gentleman standing. Your name again, sir?

Juror: Leggett.

The Court: Mr. Leggett. Will you give us your experience when and where you served on a grand jury?

Juror: I was on a grand jury in 1942, February I believe it was.

The Court: In Harris County?

Juror: Yes, sir.

The Court: Is that your only experience as a grand juror?

Juror: Yes.

The Court: That is roughly 15 years ago. I will ask if your experience as a grand juror at that time would in your opinion in any way disqualify you to serve as a fair and impartial juror in this Court?

Juror: No, sir.

The Court: Very well, sir. You may be seated.

Juror: Your Honor, may I ask a question? In regard to the school board, were you referring to the Board of Trustees or a board?

The Court: Yes. What is your name?

Juror: Dover.

The Court: Elmer L. Dover.

Juror: I was chairman of the Board of Equalization in the Aldine District School last year.

The Court: Are you now on that board?

Juror: The board hasn't been appointed this year.

The Court: Very well, sir. You may be seated.

Have any of you formed or expressed an opinion concerning the guilt or innocence of any defendant in this case? If so, please rise.

(No response.)

Obviously none of you have.

Do you now have any such opinion? If so, will you please rise?

(No response.)

The Court: Do any of you know of any reason why you cannot act as a fair and impartial juror in the trial of this case?

(No response.)

Obviously none of you do.

Have any of you ever lived in the following counties, and I am going to name several. Have any of you ever lived in Duval County, Jim Wells County, Webb County, Brooks County, Jim Hogg County, Zapata County, Nueces County, Kleburg County, McMullen County, LaSalle County, or Live Oak County? If so, will you please rise?

Juror: Is Corpus Christi in one of them counties?

The Court: Yes, Corpus Christi is in Nueces County.

Juror: Is Brownsville in one of them?

The Court: No. I will call off the counties again, and if any of you have any doubts, I want you to stand up. Duval County, Jim Hogg County, Zapata County, Nueces County, Kleburg County, McMullen County, LaSalle County, and Live Oak County.

I see three gentlemen and one lady standing.

I will first recognize this gentleman. Your name, sir?

Juror: Arthur Koy.

The Court: Arthur Koy. You lived in Corpus Christi?

Juror: Yes, sir.

The Court: For how long?

Juror: About a year and nine months.

The Court: When?

Juror: In 1929, I think.

The Court: 1929.

Juror: Yes.

The Court: Very well, sir. You may be seated.

And this gentleman?

Juror: A. R. Dalchau.

The Court: Alton R. Dalchau. Where did you live, sir?

Juror: McMullen County, about six months.

The Court: When was that?

Juror: 1937.

The Court: And the lady, please?

Juror: Nueces County. Corpus Christi.

The Court: What is your name?

Juror: Mrs. Anna Alford.

The Court: You lived in Nueces County?

Juror: Yes, sir.

The Court: How long ago and when?

Juror: 1939 until the first part of 1942.

The Court: Very well, ma'am. You may be seated.

And the next gentleman is Mr. James L. Cook?

Juror: I lived in Corpus Christi.

The Court: For how long and when?

Juror: 1950 until 1953.

The Court: Very well, sir. You may be seated.

Do any of you have any relatives who live or have lived in any of the counties mentioned?

Very well. I see one lady and one gentleman, and another gentleman standing. Your name, please?

Juror: Mrs. Lucille Foster. I have a half-brother that lived at Kingsville.

The Court: How long has he lived at Kingsville?

Juror: About 35 years.

The Court: In what business is he engaged?

Juror: He is a cattleman. He is dead now.

The Court: How long has he been dead?

Juror: He died last year.

The Court: Very well, and thank you. You may be seated.

This gentleman?

Juror: Hugh Gill.

The Court: No. 35, Hugh Gill, Jr. Will you explain, please?

Juror: My parents, both living, and my brother and his family live in Corpus Christi and have been about ten years.

The Court: Ten years, and in what business is your father and your brother engaged?

Juror: Geologist and petroleum engineer.

The Court: Again Mr. James L. Cook, will you explain?

Juror: I have relatives living in all those counties, Corpus on down to the Rio Grande.

The Court: Are you from that part of the State?

Juror: No, sir, I am from Houston.

The Court: Name some of your close relatives, such as brothers or cousins.

Juror: I don't have any brothers.

The Court: You have cousins and uncles there?

Juror: Yes.

The Court: And about how many would you say in that area? Can you name some of them and where they live and their occupations?

Juror: I have two uncles in Corpus, both by the name of Mathews, and I have an uncle in Aransas Pass by the name of Mathews, and I have an uncle living in Kingsville by the name of O'Neal.

The Court: And in what business are they engaged?

Juror: The two that live in Corpus work for the Telephone Company, and the one in Aransas Pass owns a fishing place.

The Court: Very well. Thank you, Mr. Cook.

Have any of you ever had a lawsuit or dispute with the United States Government? If so, will you please rise?

(No response.)

Obviously none of you have.

Have any of you ever had a relative or close friend who had a lawsuit or dispute with the United States Government? If so, will you please rise? Will you please rise? I thought I saw a hand go up back there.

The Clerk: No, sir.

The Court: What is your name, sir?

Juror: Frank Beeler.

The Court: Will you explain, please?

Juror: I was a witness two weeks ago in the Martin case.

The Court: Did you testify for or against the defendant?

Juror: I testified for the defendant.

The Court: You testified for the defendant. Is that the only experience you or any of your friends have ever had with the Government?

Juror:: Yes, sir.

The Court: Very well, sir. You may be seated.

I have a request to again propound some questions which I am sure were propounded to you by Judge Hannay last Monday. They are questions relating to any brushes any of you may have had with the law but I am not going to ask these questions until we have exhausted all other questions, and I will ask again if any of you, and those who have heretofore been challenged for cause may not answer this question. I will ask again if any of you know any reason why you cannot act as a fair and impartial juror in the trial of this case? If so, will you please rise?

(No response.)

Obviously none of you do.

I will ask each side, I will ask both sides if they wish further questions to be asked of the jury panel, and I recognize the defendant first.

Mr. Foreman: We would like to have the jury panel asked if any of them are stockholders or employees of either of these companies or individuals—

The Court: You are referring to the companies named in the several counts of the indictment?

Mr. Foreman: Yes, Your Honor.

The Court: Very well, sir. Read the names.

Mr. Foreman: Humble Oil & Refining Company, The Texas Company, Texas Pipe Line Company, Continental Oil Company, and two independents, J. E. Beal and C. W. Hahl.

The Court: J. E. Beal? And the other name?

Mr. Foreman: C. W. Hahl.

The Court: Are those individuals or companies?

Mr. Foreman: Individuals, is my understanding, Your Honor. The Continental, the Texas, the Texas Pipe Line Company, and the Humble.

The Court: Are there any other questions?

Mr. Foreman: That is all.

The Court: And the Government?

Mr. Wilkey: The Government has no questions, Your Honor.

The Court: Very well.

Are any of you—what is the question?

Mr. Foreman: If any of them are employees, own any stock, or their husbands or wives are employees of.

The Court: These companies?

Mr. Foreman: Of the Humble, The Texas, the Texas Pipe Line, the Continental, Mr. Beal or Mr. Hahl.

The Court: Very well. Will you be seated, please?

I want to propound the question to the entire panel. Are any of you employed by or are you wives or husbands employed by or are any of you officers or your husbands and wives stockholders in any of the following

companies: The Humble Oil & Refining Company, The Texas Company, the Texas Pipe Line Company, Continental Oil Company, J. E. Beal, or C. W. Hahl?

If any of you would answer any of those questions yes, will you please rise?

I see three gentlemen standing.

Your name, sir?

Juror: Frances Whalen.

The Court: No. 29, Frances Whalen, engineer, Humble Oil & Refining Company. How long have you been employed by Humble?

Juror: Seventeen years.

The Court: Are you a stockholder?

Juror: Yes, sir.

The Court: Considering that you are an employee of the Humble Oil & Refiining Company 17 years and you are a stockholder in this company, and if it should develop that the Humble Oil & Refining Company is involved in one or more of these counts, would that in any way bias or prejudice or influence your judgment in the trial of this case?

Juror: No, sir.

The Court: And if you should be selected as a juror to try this case, the fact that you are an employee and a stockholder notwithstanding, would you try this case fairly on the evidence as you see it and hear it?

Juror: Yes, sir.

The Court: Very well, sir. You may be seated.

Your name?

Juror: Hugh Gill.

The Court: Hugh Gill, Jr., No. 35. What is your situation, sir?

Juror: I am a geophysical computer for the Atlantic Refining Company and closely associated with Continental.

The Court: Are you a stockholder?

Juror: No, sir.

The Court: You are a geophysical computer with the Atlantic Refining Compuany that has some connection with the Continental?

Juror: Yes, sir.

The Court: Considering that fact, and considering if it should develop that the Continental Oil Company is involved in one or more of these counts, would that fact in any way bias or prejudice you or influence your judgment in the trial of this case?

Juror: No, sir.

The Court: And if you should be selected as a juror to try this case, would you try it fairly on the evidence as you see it and hear it?

Juror: Yes, sir.

The Court: Very well. You may be seated.

The other gentleman?

Juror: Lorenz K. Hildebrant.

The Court: Roustabout, pumper, oil field worker, Texas Company, Production Department at Spring.

Are you a stockholder in The Texas Company?

Juror: Yes, sir.

The Court: Are you a stockholder in any other companies named?

Juror: No, sir.

The Court: How long have you been employed by those companies?

Juror: Seven years.

The Court: Considering you are employed by the Texas Company as a roustabout-pumper, and considering further you are a stockholder of The Texas Company, and considering if it should develop The Texas Company is involved in one or more of these counts, would that fact in any way bias or prejudice or influence your judgment in the trial of this case?

Juror: No, sir.

The Court: And if you should be selected as a juror to try this case, will you try it fairly on the evidence as you see it?

Juror: Yes, sir.

The Court: Very well. You may be seated.

It is now about eight minutes after eleven. I am going to declare a recess, but before I do I am going to propound —I am going to read some questions to you which are asked out of an abundance of precaution. I am sure these questions were asked of you when you qualified last Monday morning.

About the nature of the questions, if any of you want to discuss these matters privately, you may do so during the recess. You may come to the jury room and I will be in the jury room.

Has anyone ever been indicted for any crime by any State or Federal grand jury? What was the crime charged in the indictment, and what disposition was made of the charges? Has anyone been arrested by any city, county, State or Federal officer within the past two years for an offense other than a traffic violation? For what were you arrested and what disposition was made of the matter?

You have heard the questions. If any of you have any experience you think should be discussed and brought to light, I will hear you during the 30-minute recess, in the jury room. If you will speak to the Clerk, Mr. Anderson, or the Bailiff, Mr. Gerrard, they will tell you how to find me, and if any of you have anything you want to discuss with me in that recess, I would ask that you do it early during the recess, as I should like to have a recess too.

With that announcement, Court will recess for 30 minutes.

(Short recess.)

The Court: Be seated, please.

As to the last question I asked, I will advise that I had no callers, and I think the matter has been well explored, and I am certain that there is no one on this jury panel that would come within the category questioned.

I am also advised that Mr. Fred B. Smith, Jr., No. 32, has an explanation concerning a question previously asked. I will recognize you, Mr. Smith.

Juror: Judge, I am a member of the City Council, and I am also chairman of the Police Committee.

The Court: That is in the City of Huntsville?

Juror: Yes, sir.

The Court: You are chairman of what?

Juror: The Police Committee.

The Court: How long have you been Police Commissioner?

Juror: This is my fourth year.

The Court: Let me ask if you have had any other connection with law enforcement other than your four years service as member of the City Council and Police Commissioner of the City of Huntsville?

Juror: No, sir.

The Court: Considering your experience in that respect, would that in any way bias or prejudice or influence your judgment in this case?

Juror: I don't think so.

The Court: And if you should be selected as a juror to try this case, would you try it fairly on the evidence as you see it?

Juror: Yes, sir.

Mr. Foreman: While you are interrogating Mr. Smith, may we ask which theater? There are several in Huntsville.

The Court: Which is your theater?

Juror: I have the Life Theater and the Pines Drive-In.

The Court: Thank you. It appears that eleven jurors

with you, you should ascertain who it is and report it to the Court, that even though you are unable to ascertain who it is, you should nevertheless report it to the Court, and with those instructions Court is recessed until two o'clock, and all jurors, including those who have been challenged, are instructed to return.

Court is recessed until two o'clock.

707 AFTERNOON SESSION—MAY 6, 1957

The Court: Be seated, please.

I will ask that the Clerk call the names of those who are selected as jurors to try this case, and as your names are called, will you please take your seats in the jury box?

(The Clerk thereupon called the names of the selected jurors.)

The Court: Well, we have 12 jurors in the box, all men. The Court will empanel four alternate jurors under the provisions of Rule 24-C of the Federal Rules of Criminal Procedure, which provides in part: "The Court may direct that not more than four jurors, in addition to the regular jury, be called and empaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination, and challenges, shall take the same oath, and shall have the same function, powers, facilities and privileges as the regular jurors. The alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict.

"Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be empaneled, and two peremptory challenges if three or four alternate jurors are to be empaneled."

The Court will empanel four alternate jurors, which mean each side will be entitled to two additional peremptory challenges, and I will call the names of eight jurors who have not heretofore been challenged by either side. They are the first eight on the list who have not heretofore been challenged or chosen.

As I call your names, I will ask that you rise and remain standing.

John D. Farris, Leslie F. Harvey, Karl Dazzio, Cap Johnson, Mrs. Anna M. Alford, James L. Cook, Earnest J. Foreman, Ephraim A. Matthews, and that is eight. From the eight jurors whose names I have just called and who are now standing, each side is entitled to two additional peremptory challenges.

Mr. Foreman: That is starting with No. 48?

The Court: Starting with 48. Do you want the names again, Mr. Foreman?

Mr. Foreman: Yes, Your Honor, please.

The Court: I will ask the Clerk to call the names, and as the names are called, will you please hold up your hand?

The Clerk: John D. Farris, Leslie F. Harvey, Karl Dazzio, Cap Johnson, Mrs. Anna M. Alford, James L. Cook, Earnest J. Foreman, Ephraim A. Matthews.

The Court: You may drop your hands now. Of the

eight jurors now standing, the Clerk will call the first four names not challenged.

The Clerk: Leslie F. Harvey.

The Court: Mr. Harvey is empaneled as the first alternate juror. Mr. Harvey, will you take a seat in the section of four seats at the end of the jury box?

The Clerk: Cap Johnson.

The Court: Mr. Johnson is empaneled as the second alternate juror.

The Clerk: James L. Cook.

The Court: Mr. Cook is empaneled as the third alternate juror.

The Clerk: Ephraim A. Matthews.

The Court: Ephraim A. Matthews is empaneled as the fourth alternate juror. You may be seated.

710 DEFENDANTS' FIRST MOTION FOR JUDGMENT OF ACQUITTAL

(Caption Omitted)

(filed, June 25, 1957)

To Said Honorable Court:

Defendants, at close of the evidence offered by the Government, move for judgment of acquittal of each offense for which each defendant is on trial herein, and as grounds for this motion would show the Court as follows:

1.

Five of the substantive counts, to wit, Counts 1, 2, 5, 7 and 18, each charge the purported offense of *causing* a taking from the mails of a letter for the purpose of exe-

cuting a scheme to defraud, and the remaining substantive counts, to-wit, Counts 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 19, each charge the purported offense of *causing* a placing in the mails of a letter for the purpose of executing a scheme to defraud, the theory of the Government being that each of these purported offenses is created by the Mail Fraud Statute (18 *U.S.C.* 1341). But neither that Statute, in its present form, nor any other federal statute penalizes the mere act of *causing* a letter to be placed in or taken from the mails for the purpose of executing a scheme to defraud. Such an act is made punishable by federal law only when done wilfully. 18 *U.S.C.* 2(b). In other words, the alleged conduct of defendants sought to be punished by the substantive counts of the indictment in this case would be punishable only if such alleged conduct were shown by proper allegations to have been done wilfully. But there are no such allegations in any substantive count. Nowhere in any substantive count is the element of wilfulness alleged. Defendants therefore aver that each substantive count wholly fails to state any offense.

2.

If Counts 1, 2, 5, 7 and 18 each state an offense (which is not admitted but denied), then such offense would be completed (and therefore *committed*) either by acts causing the therein alleged taking of a letter from the mails *or* by the taking itself. If acts causing the alleged taking be relied on as completing said offense, then the proof wholly fails to establish venue as to each of such counts, because the proof does not show any acts by defendants of any kind in the Houston Division of this Court where defendants are alleged by each of such counts to have caused a taking of a letter from the mails. On the other hand,

if the alleged taking which was allegedly caused be relied on as completing said offense, then each of said counts wholly fails to show that this Court has jurisdiction, because nowhere in any of such counts is there any allegation showing that the place of the therein alleged taking of a letter from the mails was any place within the jurisdiction of this Court. If, in each of said counts, there were an averment showing that the therein deseribed letter had ever been properly deposited in the mails it would be possible to indulge a presumption that the alleged taking of such letter from the mails did occur at the address carried on the envelope transmitting such letter, which address is within the Houston Division of this Court. But there is no such averment in any of said counts. In short, each of such counts wholly fails to show that the therein alleged taking of a letter from the mails occurred at any place within the jurisdiction of this Court.

3.

If Counts 3, 4, 6, 8-17 and 19 each state an offense (which is not admitted but denied), then such offense would be completed (and therefore *committed*) *either* by acts causing the therein alleged placing of a letter in the mails *or* by the placing itself. If acts causing the alleged placing be relied on as completing said offense then the proof wholly fails to establish venue as to each of such counts, because the proof does not show any acts by defendants of any kind in the Houston Division of this Court where defendants are alleged by each of such counts to have caused a placing of a letter in the mails. On the other hand, if the alleged placing which was allegedly caused be relied on as completing said offense, then each of said counts wholly fails to show that this Court has jurisdiction, because nowhere in any of such

counts is there any allegation showing that the place of the therein alleged placing of a letter in the mails was any place within the jurisdiction of this Court.

4.

Since the 20th count avers only a conspiracy to commit the offense alleged by the first count, and since omission from the first count of any allegation as to the element of wilfulness keeps it from stating any offense, it follows that the 20th count avers a type of conspiracy which violates no law of the United States, namely, a conspiracy to do acts which, if done, would not constitute a federal crime of any kind.

5.

The evidence wholly fails to establish venue in the Houston Division of this Court as to the offense sought to be charged by the 20th count.

(a) The proof wholly fails to sustain the averment of the 20th count that the Houston Division of this Court was the place where the therein alleged conspiracy was formed. If the proof tends to show any such conspiracy (which is not admitted but denied), then such proof conclusively shows that the place of the formation, if any, of such conspiracy was in Duval County or other place outside the Houston Division of this Court.

(b) The proof wholly fails to show the occurrence, within the Houston Division of this Court, of any alleged overt act having power to effect the object of the alleged conspiracy. The alleged overt acts which have such power are those described in the last numbered paragraph of each of the 1st, 2d, 6th, 9th, 10th,

11th and 12th counts and those described in subdivisions 2 and 3 of the section of the 20th count entitled "Overt Acts." Each of these alleged overt acts is an alleged act, not of any defendant's using the mails, but instead is an alleged act of causing someone else to use the mails. If there be proof to show the doing by any defendant of any act which conceivably might be regarded as having caused any use of the mails as alleged (which is not admitted but denied), then such proof conclusively shows that each such act was done in Duval County or other place outside the Houston Division of this Court.

6.

The evidence is insufficient as a matter of law to sustain a conviction of any defendant for any offense charged by any count of the indictment.

7.

The evidence wholly fails to establish venue in the Houston Division of this Court as to any offense charged against any defendant by any count of the indictment.

8.

The evidence wholly fails to establish that any defendant, either alone or with anyone else, devised any scheme or artifice to defraud alleged in any substantive count.

9.

The evidence wholly fails to establish that any use of the mails charged by any count was caused by any defendant or by any member of any scheme or artifice to defraud alleged in any substantive count.

10.

The evidence wholly fails to establish that any defendant or any member of any scheme or artifice to defraud alleged in any substantive count ever did so, for the purpose of executing any such scheme or artifice to defraud (if any), any act causing any use of the mails charged by any count of the indictment.

11.

The evidence wholly fails to establish that any defendant or any member of any scheme or artifice to defraud alleged in any substantive count ever did wilfully do, for the purpose of executing any such scheme or artifice to defraud (if any) any act causing any use of the mails charged by any count of the indictment.

12.

The evidence wholly fails to establish that any defendant entered into the conspiracy charged by the 20th count.

13.

The evidence wholly fails to establish that any defendant or any member of the conspiracy alleged in the 20th count ever did do any alleged overt act having power to effect the object of such conspiracy (if any).

14.

The evidence fails to establish beyond a reasonable doubt each essential element of the each offense sought to be charged by the indictment.

15.

As to each offense sought to be charged by each substantive count, there is a fatal and prejudicial variance, in this, that each substantive count charge a single scheme to defraud, whereas the proof shows, if anything at all (which is not admitted but denied), not a single scheme to defraud but several separate and distinct schemes to defraud unconnected with each other.

16.

As to the offense sought to be charged by the 20th count, there is a fatal and prejudicial variance, in this, that such count charges a single conspiracy, whereas the proof shows, if anything at all (which is not admitted but denied), not a single conspiracy as alleged but several separate and distinct conspiracies unconnected with each other.

17.

Defendants aver it is not possible to submit this case to the jury without violation of the fundamental principles established for mass trials by the Supreme Court in *Kotteakos v. United States*, 328, U.S. 750, 66 S. Ct. 1239. The evidence is hopelessly complex and confused, tending to prove, if anything at all (which is not admitted but denied) many separate schemes to defraud and many conspiracies rather than a single scheme to defraud as alleged in each substantive count and a single conspiracy as alleged in the conspiracy count. Such evidence, and the complicated allegations of the indictment create many thousands of issues for submission to the jury. Under these circumstances it would seem that the problem of framing a charge which the jury can understand and re-

member is insurmountable. To believe that the jury can hold in their minds the names and identities of the defendants and the astronomical number of issues which must be submitted and the multiplicity of evidentiary restrictions which must be imposed and that the jury can segregate and classify all the different bits of the voluminous proof requires "faith and confidence in the human intellect which experience does not support." United States v. Central Supply Assn., 6 F.R.D. 526 (N.D. Ohio, 1947, Wilkin). In short, "faith that the verdict in such a case would be rational and fair would have to be based on a blind trust in ritual contrary to all experience of possibilities." *Ibid* Premises considered, defendants aver that there is no possible way this case reasonably may be tried without violation of the principles laid down by the above cited *Kotteakos* case and that therefore defendants should be acquitted.

18.

Premises considered, defendants respectfully move that this Honorable Court enter judgment of acquittal of each offense for which each defendant is on trial herein.

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